

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JESSECA NALDO,

Plaintiff,

New York, N.Y.

v.

15 Civ. 2896 (PKC)

GLAZE TERIYAKI, LLC, PAUL KRUG
and DENNIS LAKE,

Defendants.

April 11, 2016
1:45 p.m.

Before:

HON. P. KEVIN CASTEL,

District Judge

APPEARANCES

PARDALIS & NOHAVICKA, LLP
Attorneys for Plaintiff

BY: ARIADNE PANAGOPOULOU
JOSEPH D. NOHAVICKA

HELBRAUN LEVEY & O'DONOGHUE LLP
Attorneys for Defendants

BY: KEVIN SEAN O'DONOGHUE
ROBERT ONTELL

1 (A jury of 8 impaneled and sworn)

2 THE COURT: Good afternoon, ladies and gentlemen. For
3 the record, is the jury satisfactory to the plaintiff?

4 MS. PANAGOPOULOU: Yes, your Honor.

5 THE COURT: Is the jury satisfactory to the defendant?

6 MR. O'DONOGHUE: Very much, your Honor. Thank you.

7 THE COURT: Prior to the lunch break, I confirmed same
8 with counsel and received the same response whereupon our
9 jurors were duly sworn by the deputy clerk.

10 Let me give you some preliminary instructions, ladies
11 and gentlemen. As I told you during the jury selection
12 process, the judge and jury have separate roles in a trial. My
13 job is to instruct you as to the law that governs or controls
14 the case and I will give those instructions to you at the end
15 of the trial. Your job as jurors is to determine the facts
16 based on the evidence presented at trial. You are the triers
17 of fact and your decisions on the factual issues will determine
18 the outcome of this case. You must pay close attention to all
19 the evidence presented. Evidence consists only of the
20 testimony of witnesses, documents and other things admitted as
21 evidence, or stipulations agreed to by the parties.

22 Some things are not evidence and must not be
23 considered by you. I'll list them now. Statements, arguments,
24 and questions by lawyers are not evidence, nor are my own
25 statements to you. So in a few moments the lawyers will make

1 an opening statement to you as to what they believe the
2 evidence will show and at the end of the trial they may give a
3 closing statement as to what they believe the evidence has
4 shown. Those statements are their views on the evidence, but
5 they are not evidence themselves.

6 Same way with questions. Say a lawyer stood up and
7 asked a witness, is it true that you went to Junior's
8 Restaurant in Brooklyn on April 3, 2011 and had lunch with Lady
9 Gaga. Now, you are thinking, Junior's Restaurant, April, Lady
10 Gaga, there has got to be something to it. If the answer to
11 the question is no, that's evidence of nothing. If the answer
12 is yes, it's the question coupled with the answer that makes it
13 evidence. So you don't read anything into the fact that a
14 question was asked.

15 And same way with my statements. They don't qualify
16 as evidence. Objections to questions are also not evidence.
17 Lawyers have obligations to their clients to make objections
18 when they believe evidence is offered improperly under the
19 rules of evidence. You should not be influenced by the
20 objection or by the Court's ruling on it. If the objection is
21 sustained, ignore the question and any answer that may have
22 been given. If it is overruled, treat the answer like any
23 other matter. If you are instructed that some item of evidence
24 is received for a limited purpose only, you must follow that
25 instruction.

1 During the course of the trial it's my job as the
2 trial judge to advise counsel whether they are not in
3 compliance with a rule of court. That's what trial judges do.
4 I may tell somebody to stand back or to keep their voice up or
5 lower their voice or to do something in a particular manner.
6 Don't read anything into it. I don't have any opinion as to
7 how you should decide this case. I'm just doing my job as the
8 judge when I do that and counsel or direct an attorney.

9 Something else that's not evidence is testimony that
10 the Court has excluded or stricken or I told you to disregard.
11 It's not evidence and must not be considered by you. Anything
12 you may have heard or seen outside the courtroom is not
13 evidence and must be disregarded. You have to decide the case
14 solely on the evidence presented here in this courtroom.

15 Now, you will have to decide the credibility of the
16 witnesses. You are going to observe them and watch them as you
17 do in your ordinary life and ask yourself questions like, did
18 they know what they were talking about? Were they candid,
19 honest, open, and truthful? Did they have a reason to falsify,
20 exaggerate, or distort their testimony? Sometimes it's not
21 what a witness says, but the way that they say it that may give
22 you a clue as to whether or not to accept the witness' version
23 of an event. In short, the way a witness testifies may play an
24 important part in reaching a judgment as to whether you can
25 accept the witness' testimony as reliable.

1 Now, you have to keep an open mind throughout the
2 trial. A case can only be presented step by step, witness by
3 witness, and it would be unfair to one side or the other if you
4 made up your mind before you heard all the evidence.

5 Sometimes you hear a person give a version of an event
6 that sounds very impressive, compelling, and then you hear
7 another person's version of the same event or even the same
8 witness cross-examined with respect to the event and what
9 seemed so compelling and impressive isn't after you hear the
10 rest of the story. What I'm saying is, remember there may be
11 another side to the story. You'll use your common sense and
12 good judgment to evaluate the testimony based on all the
13 circumstances.

14 Now, there are a couple of rules I'm going to give
15 you. First, do not discuss the case among yourselves or with
16 any other person. I told you already today how important that
17 is. That means you do not discuss it with spouses, significant
18 others, children, parents, anyone. You'll be able to talk
19 about the case when it's over, but not now. And, in fact,
20 you'll be able to discuss it among yourselves in the
21 deliberation process. But you don't go back into the jury room
22 after a break and sit around the table and talk about what you
23 thought of a witness. That's improper under the instructions
24 I've given you. You do not discuss the case until the end of
25 the case and you're in deliberations.

1 Next, you are not allowed to permit anyone to speak to
2 you about the case. If you are approached by anyone, and I'm
3 sure you will not be, politely tell them that the judge has
4 directed you not to speak to anyone. If any person seeks to
5 contact you, you are required to report the incident to me
6 promptly.

7 If someone you know comes into the courtroom, and that
8 could happen, it's a public courtroom, let me know, pass a note
9 to my deputy, and she will pass it to me. Because you are not
10 permitted to know what goes on in any of the sessions I have
11 with lawyers. They relate to procedural matters and if there
12 is anything you need to know for the trial, I will see that you
13 know what you need to know.

14 The other thing is, you may not seek any information
15 about any aspect of the case by visiting the location or
16 searching on the Internet, or otherwise. Obtaining information
17 about the case, either in person or through the Internet, would
18 be unfair to the parties. I want you to think if you had a
19 family member who had a court case. They would want the case
20 heard based on what came out in the courtroom. They may have a
21 very good explanation for something. But if you go off and you
22 do your own research and the case is decided on matters that
23 either plaintiff's counsel or defendants' counsel doesn't know
24 about, they don't have the opportunity to explain that that
25 isn't true, or it's not accurate or it's out-of-date

1 information or whatever it may be. Just think of yourself or a
2 close family member sitting at these two tables and remember
3 how you would want to be treated.

4 You are not to read anything in the newspapers or the
5 Internet about the case, if that should occur -- I don't
6 believe it will occur -- and do not receive or send any
7 electronic communications about this case. This includes no
8 texting, no e-mailing, no blogging, no posting on social
9 networks or websites or use of electronic communication to
10 discuss or even mention the case. You don't even communicate
11 with one another during the trial about the case.

12 Let me say a few words about procedure. In a moment
13 the lawyers will have an opportunity to make opening
14 statements. That's a preview of what they believe the evidence
15 will be. As I said, it's not evidence itself. Then you will
16 hear the testimony of the witnesses. The plaintiff's witnesses
17 go first. Each witness gives direct testimony and then he or
18 she may be cross-examined by the other side. Also, exhibits
19 and stipulations of fact may be received into evidence. Then
20 the defendant can present witnesses and other evidence and
21 their witnesses can be cross-examined as well. And then the
22 lawyers will have an opportunity to sum up. The summations or
23 arguments are not evidence, and then you will receive my final
24 instructions on the law.

25 Without further ado, at this time I understand the

opening statement for the plaintiff will be delivered by Ms. Panagopoulou, who is going to deliver it from the table. Is that what your preference is? That's fine.

MS. PANAGOPOULOU: Yes, your Honor.

THE COURT: You may proceed.

MS. PANAGOPOULOU: May it please the Court, counsel, people of the jury, my name is Ariadne Panagopoulou and I represent the plaintiff, Jesseca Naldo, in this action. This case is very simple. Jesseca worked, was promised to be paid, but she never was. If there is one universal principle underlying all employment laws in this country, it is this one. Every worker deserves a fair day's pay for a fair day's work. If you go to work, if you perform services for your boss, your boss should pay you. This is why we are here today.

For two and a half years Jesseca worked for her boss' restaurant for more than 30 hours per week with no pay. When she asked to be paid on numerous occasions, they didn't pay her.

During the course of this trial you will hear the testimony of Jesseca, who will tell you how in February 2012 her bosses agreed to hire her to work in marketing and public relations for the restaurant on a trial basis and agreed to start paying her a few months later, when the business grew. The evidence will show the extensive amount of work that Jesseca performed, organizing events, reaching out to new

1 clients, responding to customer complaints, even cleaning
2 tables, taking out the garbage, and serving food, then
3 delivering it to people's homes.

4 The evidence will show e-mails and social media posts
5 of Jesseca interacting with clients and business partners,
6 people that depended on Jesseca for various tasks. The
7 evidence will also show that Jesseca asked to be paid on
8 numerous occasions, both orally and in writing. But their
9 reply was always the same: Sure, let's talk about it. Yeah.
10 When the business grows. Well, guess what. The business did
11 grow. Three new locations opened while Jesseca worked there.
12 But she was never paid.

13 Now, this triggers a question. Why did Jesseca
14 continue to work there for so long for free? Because as the
15 evidence will show you, this young woman was full of passion
16 and ambition for her work and for her clients. Because one of
17 her bosses misled her to believe on multiple occasions that
18 they eventually were going to pay her. When they gave her a
19 few hundred dollars here and there to string her along, she
20 believed them, she trusted them, and she stayed.

21 The reality is that for two and a half years, from
22 February 2012 until August 2014, her bosses willingly accepted
23 her services but had no intention of ever paying her.

24 People of the jury, Jesseca worked hard. It is time
25 that she is now compensated. I am standing here today asking

you to give Jesseca what her bosses never gave her, a fair day's pay for years of fair day's work. Thank you.

THE COURT: Thank you very much. Mr. O'Donoghue.

MR. O'DONOGHUE: May I use the same location as counsel?

THE COURT: You may. Absolutely.

MR. O'DONOGHUE: Good afternoon. My name is Kevin O'Donoghue. I'm the attorney for Paul Krug, Dennis Lake, and their company, Glaze Teriyaki. Along with Robert Ontell we will be asking you to return a verdict in our favor, hopefully at the end of today, perhaps tomorrow, depending on how this goes.

An opening statement is supposed to be not argument, like you just heard. It's supposed to be a promise of what can be proven with the evidence. You've all seen CSI, SVU, what have you, as evidence. As the jury you see evidence, you review it, and you make a decision about what you think happened. Simple.

In this case there is no evidence, or very little evidence, that's going to show anything that counsel just told you.

Now, she just made you a lot of big promises. I'll ask you at the end of this to think about all the things you were just promised. And when you have no evidence of that, I'll ask you to give us a verdict, because there is no

1 evidence.

2 Counsel made a big statement, fundamental principle:
3 If you work, you get paid. I think we can all agree on that.
4 If you work, you get paid. If you are an employee, you get
5 paid. Whether you are part time -- I'm sure some of you have
6 had part-time jobs -- or a 1099 as an independent contractor
7 perhaps, we understand these types of jobs.

8 And the judge at the end of the trial will tell you:
9 These are the things that makes an employee, these are the
10 things that makes an independent contractor. There is
11 different classifications.

12 In any respect, in any area where you would be
13 employed, there would be proof, wouldn't there? All of you
14 have jobs. We heard all about you. It was interesting. But
15 you have jobs. And in those jobs you can prove it. If I said,
16 how do you know you worked for a golf course, you can say, I
17 have a pay stub; well, I pay my taxes and on my taxes it says
18 that I worked for the golf course. And we all just discussed
19 your employment as well.

20 MR. NOHAVICKA: Objection. This is closing argument.

21 THE COURT: Overruled.

22 Ladies and gentlemen, as I told you, opening
23 statements are a preview of what a lawyer believes the evidence
24 will show. I'm giving both sides a little bit of latitude. Go
25 ahead.

1 MR. O'DONOGHUE: Thank you, your Honor.

2 THE COURT: Ladies and gentlemen, if at the close of
3 the case, if you find that a statement made by a lawyer is not
4 supported by the evidence, then the lawyer's statement alone is
5 not proof of anything.

6 Go ahead, Mr. O'Donoghue.

7 MR. O'DONOGHUE: Thank you, your Honor.

8 Nothing counsel said was evidence. Nothing I say is
9 evidence.

10 THE COURT: Move on, Mr. O'Donoghue. I don't need a
11 repetition of my instruction to the jury. Thank you very much
12 for reinforcing my comments, but move on.

13 MR. O'DONOGHUE: Just trying to get my bearings back.

14 THE COURT: Go ahead. Do that.

15 MR. O'DONOGHUE: There is proof of employment when one
16 is employed. At the end of the year we all get a tax document,
17 says we are employed. Every week or two weeks or every day we
18 get a pay stub, we get a direct deposit, we get some proof that
19 you worked.

20 In this case there is no evidence that Ms. Naldo, the
21 plaintiff, ever worked for Glaze Teriyaki. Let's be clear.
22 The clients will testify about their business and they will
23 tell you, yeah, she came in, she worked for us briefly. She
24 was from our hometown. She was looking to build her résumé.
25 She was in college, she told us, full time, and she needed to

1 build up her résumé and we could use the extra help. When we
2 needed a playlist of the music for the restaurant, when we
3 needed social media help, sure, we would let her do it. But
4 she wasn't essential. She wasn't an employee. She wasn't
5 reliable.

6 You will hear from Ms. Naldo herself that she took
7 trips, that she was not always available, that she was in
8 school at St. John's. This is not somebody who was an
9 employee. This is somebody who every now and then did a little
10 bit of work and was compensated in different ways. She was
11 given trips. She was allowed to use her LinkedIn as a platform
12 to get more jobs.

13 She was allowed to try to develop herself, despite the
14 fact that she no degree in marketing and communications,
15 despite the fact that she had no experience whatsoever. They
16 tried to help her out.

17 Subsequent to that time you will also hear from her,
18 she has never had a job in marketing. She has never been able
19 to continue with this work. The only thing she was able to do
20 was to help these guys out a little bit when they were gone.

21 Apparently, I didn't realize that as a company grows
22 it is supposed to pay people more. That's not the way things
23 work. These are two guys who are trying to get a business off
24 the ground, working day and night to get it done. They had a
25 little bit of help from Ms. Naldo.

What she is saying simply doesn't add up. It doesn't add up. 30 months is what counsel told you, two and a half years. 30 months she worked there and she never got paid but she thought she would? That doesn't add up. The fact that when you see this evidence that they are going to show you, it's one e-mail, May 2013, where she brings up getting paid. How many of you would go 15 months working --

MR. NOHAVICKA: Objection.

MR. O'DONOGHUE: -- 30, 40 hours a week.

THE COURT: Basis.

MR. NOHAVICKA: Golden rule.

THE COURT: What is the golden rule?

MR. NOHAVICKA: When you address the jury --

MR. O'DONOGHUE: A criminal thing, Judge.

MR. NOHAVICKA: When you put the jury in your shoes.

THE COURT: Overruled.

MR. O'DONOGHUE: As I was saying, after 15 months you say you are going to get paid and you are not. I can understand 15 days. We have all had jobs where someone is late paying you. Sure. 15 months, 20 months, 24 months, 30 months? That doesn't add up.

I am saying that what you are going to be shown today is not going to add up to make you believe that there was an employer/employee relationship here that required payment to Ms. Naldo, and that's why all these years later you are sitting

here hopefully just for today. There will be no evidence at the end of this to show you that any of their claims are valid and we will ask you, hopefully, to return a judgment in our favor, for the defendants. Thank you.

THE COURT: Plaintiff may call their first witness.

MR. NOHAVICKA: Thank you, your Honor. We call Jesseca Naldo to the stand, please.

JESSECA NALDO,

the Plaintiff, called as a witness on her own behalf,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. NOHAVICKA:

Q. Jesseca, how old are you right now?

A. 27 years old.

Q. Where do you live?

A. I live in Long Island and go back and forth between Astoria and Long Island.

Q. That's Astoria, Queens?

A. Yes.

Q. I want you to tell the jury a little bit about your educational background. Where did you go to high school?

A. I'm originally from Seattle, Washington. I went to Holy Names. Sorry. I'm a little nervous. I went to -- I attended St. John's in '07. I was supposed to graduate in 2011, took a little break. Went like full time between working with Glaze,

1 as well as going to classes. I walked in and graduated a
2 number of years ago but I never finished two classes, so that's
3 what I'm doing right now, is to complete that.

4 Q. What kind of degree did you get?

5 A. Communications.

6 Q. Did you take any classes in marketing while you were in
7 school?

8 A. I did.

9 Q. What classes did you take?

10 A. Copyrighting class, graphic designs class, intro to mass
11 communications, those types of classes, public relations.

12 Q. Did you get any kind of awards or anything while you were
13 at St. John's?

14 A. I was very involved in student government and some other
15 clubs, so I guess that's my -- I did get a couple of awards.

16 Q. Were any of them related to marketing?

17 MR. O'DONOGHUE: Objection. Leading.

18 THE COURT: Overruled.

19 Q. Were any of the clubs that you were involved in related to
20 marketing?

21 A. Yes.

22 Q. What were they?

23 A. Well, I was on student government. I was working on a
24 committee, concert committee, public relations committees, got
25 a lot of awards -- not me solely, but our team and especially

when I left and distanced myself from student government. We did get recognized.

Q. Let's talk a little bit about your employment background. Tell us what you did when you first -- not when you first graduated, but after high school, what did you do?

A. My first job was working as a hostess at Top of the Rock, the attraction at Rockefeller Center. I did a couple of internships, PR internship. I did an internship with the one group, the restaurant hospitality group. They specialize --

THE COURT: Excuse me. Stop. Specialize in.

THE WITNESS: Restaurant hospitality.

Q. When did you do that?

A. I did that right before my position with Glaze, so that was my internship prior.

Q. And what other experiences have you had with marketing prior to going to Glaze?

A. I used to work for Red Bull North America. I was a part of their brand representative marketing team. We did a lot of gorilla marketing, experience shall marketing. I worked a lot with events, a lot with branding.

THE COURT: Slow down.

A. A lot with branding.

Q. It's exciting, but you have to slow down.

A. Beverages. That was my experience with that. We worked within a team.

1 Q. How long did you work with them? This is with Red Bull we
2 are talking about.

3 A. About two years.

4 Q. Did you get paid during that time?

5 A. I did.

6 Q. You were considered an intern, you testified, is that
7 correct?

8 A. I'm sorry?

9 Q. You testified that you were an intern?

10 A. Yes. With the ONE Group.

11 Q. After Red Bull, what is the next thing you did?

12 A. After Red Bull, I became an administrative assistant for a
13 ballroom dance studio. That was my summer job. And then,
14 after that, was my internship with the ONE Group.

15 Q. When was the internship with the ONE Group, what year?

16 A. 2011. The latter half.

17 Q. And I am going to talk to you now about your time with
18 Glaze Teriyaki. First of all, please tell the jury, what Glaze
19 Teriyaki is.

20 A. Glaze Teriyaki is a fast casual restaurant specializing in
21 Seattle style teriyaki platters, so rice, entrée, sides, very
22 fast, very casual. I just said that.

23 Q. When did you start working there?

24 A. February 2012 is when I signed on board.

25 Q. Where is it located? I'm talking about the Glaze Teriyaki

1 where you were working.

2 MR. O'DONOGHUE: Objection. Counsel continues to say
3 working, which has not yet been established.

4 THE COURT: Overruled.

5 Q. You want me to repeat that?

6 A. Yes.

7 Q. Where was the Glaze Teriyaki restaurant where you were
8 working --

9 A. Midtown East.

10 Q. Where exactly is midtown East?

11 A. 53rd and Lexington.

12 Q. How is it that you became aware of an opening there?

13 A. I subscribe to newsletters, like Gothamist, and they
14 continually announce new restaurants, and I had gotten a
15 notification about a new Seattle-style teriyaki place and it's
16 something that we hold dearly back home. It's like our street
17 food, our mom-and-pop thing.

18 While I was in school, it was actually an idea that I
19 really wanted to do for myself. I thought it was something
20 that New York didn't have, which was teriyaki, which was
21 unconventional, different.

22 But I realized someone else had already started it,
23 and I wanted to kind of check it out for myself, it was a
24 comfort thing, a home thing. I went to the restaurant on a
25 random visit and that's where I met Paul.

1 Q. When you are referring to Paul, who is that exactly?

2 A. The operator and owner.

3 Q. What is his last name?

4 A. Krug.

5 Q. Is he here in this courtroom today?

6 A. He is.

7 Q. Can you point to him and identify him.

8 THE COURT: Tell me an article of clothing he is
9 wearing.

10 THE WITNESS: Maroon tie, suit.

11 THE COURT: Which table, the front table --

12 THE WITNESS: The second table.

13 THE COURT: On the right-hand side of the table or the
14 left-hand side of the table?

15 THE WITNESS: Left-hand side of the table.

16 THE COURT: Identification noted.

17 Q. And when did you first meet with that gentleman?

18 A. I went into the restaurant and I had --

19 Q. Let me just interrupt you. My question for the jury to
20 hear is, when did this occur?

21 A. When?

22 Q. Yes.

23 A. October 2011.

24 Q. And how is it that you made an appointment?

25 A. I didn't make an appointment. I walked in, ordered my

1 food, introduced myself to the cashier. I got really excited.
2 I was like, are you from Seattle? And he said no. But he
3 went, I'm not from Seattle, but that guy back there, and that
4 guy back there was Paul. And then once I got my food, I sat
5 down by myself and he came over to say hi because he got the
6 news, and that's --

7 Q. Let me just stop you. I didn't mean to step on your words.

8 MR. O'DONOGHUE: Objection.

9 Q. What news are you talking about?

10 MR. O'DONOGHUE: Objection. Counsel can't stop his
11 own witness amid testimony and then ask her to give an answer
12 that he wants differently.

13 THE COURT: I would avoid doing that, please.

14 MR. NOHAVICKA: Very well, your Honor.

15 A. Repeat, please.

16 Q. We were talking about you in the restaurant when you told
17 us that you ordered your food.

18 A. Yes.

19 Q. At some point you got over to meet with Paul?

20 A. Um-hum.

21 Q. Is that accurate?

22 A. Yes.

23 Q. What did you say to him?

24 A. He came over, and I don't know the exact verbiage, but he
25 was like, you're from Seattle. And that's where we kicked off.

1 And I think we just had a very casual conversation, you know
2 about teriyaki. I do. Love it. He asked me what I thought
3 about the product. I said it was phenomenal, tasted like home.
4 Just a really great conversation.

5 I told him about how I was interning for the ONE Group
6 and that is what I was doing, but something like what he was
7 doing was actually a concept that I was really passionate about
8 and he admired that. And then from there we exchanged
9 information and agreed on possibly meeting for coffee to
10 discuss my potential future with Glaze.

11 Q. During that first conversation, did you discuss at all what
12 you were doing for the ONE Group?

13 A. Yes.

14 Q. What did you tell him exactly?

15 A. I said I was a marketing intern/assistant for the ONE
16 Group, and I was assisting with events, I was helping out with
17 their social media and marketing efforts. He was really
18 interested because I was young and clearly experienced and that
19 sort of stuff, and, plus, I was also passionate about the
20 concept. I understood it. It's a weird concept, but not a lot
21 of people can understand or embrace. And me being from
22 Seattle, he liked that.

23 Q. Did he ask you about any other experience you had in
24 marketing?

25 A. Yeah. I mentioned Red Bull, I mentioned -- I think Red

1 Bull was the big one. But being a marketing assistant already
2 from a restaurant background and a hospitality background, that
3 helped a lot.

4 THE COURT: And this conversation was when?

5 THE WITNESS: October 2011.

6 THE COURT: Thank you.

7 Q. After the October 2011 initial meeting that you had with
8 Paul, did you have a second meeting?

9 A. We did.

10 Q. And when was that?

11 A. I'm not sure exactly. It was November or December 2011.
12 And we met for coffee.

13 Q. Where did it take place?

14 A. I think coffee.

15 Q. Where is that?

16 A. That was on 13th and Fourth.

17 Q. Who arranged that location?

18 A. Paul did.

19 Q. And you went to that location?

20 A. Um-hum.

21 Q. Yes?

22 A. Yes.

23 Q. Were you by yourself?

24 A. Yes.

25 Q. And was he with anybody else?

1 A. It was just the two of us.

2 Q. What did you discuss?

3 A. We discussed -- we just kind of continued off of our last
4 conversation. He was really interested in me coming on board.
5 He talked about me interning for him. He said that it wouldn't
6 be paid, but over time and over a few months, once the business
7 grew, that we would consider compensation once I was more
8 settled in my position and helping out. We would talk about
9 money. I think for me I really wanted to be a part of that
10 cause and that concept and for me it was ok for a few months.
11 I thought, let's do this. It was something I really wanted to
12 do.

13 Q. At that time what was your understanding of an internship?

14 A. My understanding was that there was an educational aspect
15 to it. So I would shadow him to meetings, to site visits, just
16 kind of learn his side of being a restaurant operator, and
17 especially with a start-up restaurant coming off the ground I
18 knew it was a great opportunity to experience that first hand
19 as well as assisting him on the marketing strategy side of
20 things, especially since I'm a college student. I know social
21 media. And he knew that I could do that well and I could
22 perform that well and be creative and get those things done.

23 Q. At this coffee shop meeting was there discussion about what
24 your duties would be upon your start date at Glaze Teriyaki?

25 A. Not specifically. It was more so me just shadowing him, me

more so just following him around and learning. And in terms of specific tasks, those weren't really, I guess, discussed until I started my first few days there when we kind of realized, this is what needs work, this is what's missing, this is what could be improved upon. I think from there that's when we started to gain ground on my involvement and find things for me to do.

Q. At this time that you were at the coffee shop with Paul, were you a student in college?

A. I'm sorry?

Q. Yes. At the time you were with Paul at the coffee shop meeting, were you a student in college?

A. Yes.

Q. And what year were you in?

A. My senior -- it should have been my senior year.

Q. Where was that?

A. St. John's.

Q. When Paul discussed with you compensation, you mentioned that word compensation, what was your understanding of what compensation was?

MR. O'DONOGHUE: Objection. Mischaracterizes the testimony and calls for an answer that the witness cannot give.

THE COURT: I'll allow it. Go ahead.

Q. You want me to repeat that for you?

A. Yes.

1 Q. When the word compensation was discussed at the meeting
2 with Paul, what was your understanding of the meaning of that
3 word?

4 A. Money.

5 Q. Were college credits offered to you at that time?

6 A. No.

7 Q. Did you receive college credits during any time that you
8 worked for Glaze Teriyaki?

9 A. No.

10 MR. O'DONOGHUE: Objection. Counsel continues to lead
11 the witness, Judge.

12 THE COURT: Yeah. Avoid that.

13 When you say offered, offered by whom?

14 MR. NOHAVICKA: By Paul, your Honor. I'm sorry, that
15 wasn't clear.

16 THE COURT: The question is whether the defendant
17 offered college credit?

18 MR. NOHAVICKA: Yes.

19 THE COURT: How would the defendant offer college
20 credit?

21 MR. NOHAVICKA: Just like at our firm, we have interns
22 that in addition to getting paid, they also get credits --

23 THE COURT: They may. But you don't offer any credit.
24 You are not authorized to offer any credit, are you?

25 MR. NOHAVICKA: At my firm I am, yes.

THE COURT: Really. I stand corrected. I have never heard of it before. Next question.

The question is, did either of the defendants offer you college credit?

THE WITNESS: No, they did not.

Q. From the time that you had that meeting at the coffee shop, how much time passed before you actually started working at Glaze Teriyaki?

A. A couple of months. By November, December, January I started to be wary.

Q. What was the approximate date that you started with Glaze Teriyaki?

A. Beginning of February 2012, somewhere in the first week.

Q. I want you to explain to the jury, on your first day, what were your duties at Glaze Teriyaki?

A. I honestly don't remember. It's been such a long time. But I remember walking in the door and just getting a tour, being introduced to everyone, seeing the storage, kind of seeing how everything worked in the kitchen. And I think my first day was more so watch how this kitchen operates, watch how they work together, explore, get yourself familiar, and kind of just see -- he wanted my opinion and my feedback on what we could improve upon in terms of marketing, what we could put around the restaurant, the chalkboards, on the front window, the menus, things like that.

1 THE COURT: When you came in on that first day, were
2 you asked to do anything?

3 THE WITNESS: Not that I recall.

4 THE COURT: Next question.

5 Q. When was the first time you were asked by anybody at Glaze
6 Teriyaki to start actually doing something when you came there
7 for work?

8 MR. O'DONOGHUE: Objection to form.

9 THE COURT: Try and rephrase it, please.

10 Q. When did you start performing any kind of duties at Glaze
11 Teriyaki?

12 A. That first week or second week.

13 Q. We want you to tell us what it is that you did.

14 A. I don't remember. It most likely had something to do with
15 customer relations, responding to a customer complaint or
16 sending out gift cards, possibly administrative work, archiving
17 things, storage, keeping track. That's what I can remember.
18 It was fairly simple stuff.

19 Q. Were you given any instruction by anybody at Glaze Teriyaki
20 as to what your duties would be?

21 MR. O'DONOGHUE: Objection to form.

22 THE COURT: Overruled.

23 Q. You want me to ask it again?

24 A. Yes.

25 Q. Did anyone ever give you instructions on what your duties

1 were at Glaze Teriyaki?

2 A. No.

3 Q. And when did you start performing any duties other than
4 what you just described to us?

5 A. I guess a few months into -- not even. I think a couple of
6 months into it. We started doing more catering efforts.

7 THE COURT: Never mind we. State what you did or what
8 you were asked to do. Leave we out of it. Ok.

9 THE WITNESS: Ok.

10 THE COURT: Thank you.

11 A. Could you repeat that one more time.

12 Q. Yes. We were talking about what your duties were and what
13 actual duties you were doing.

14 A. So in addition to me shadowing Paul and following him
15 around and doing some light marketing work, a couple of months
16 into it, I started to gain more responsibility with Dennis. So
17 he wanted me to get involved with -- because I really wanted to
18 put more into my position at Glaze. There were catering
19 efforts, how to reach out to clients, how to reach out to
20 potential customers and how to get out there and put our name
21 out there.

22 THE COURT: I've lost the train of thought here. Is
23 this something you asked to do? Is this something you were
24 told to do? Please give me your best recollection of what
25 transpired.

1 THE WITNESS: Both, actually. It was -- as an intern,
2 as someone who really wanted to do well at their job, whatever
3 the description was --

4 THE COURT: Confine yourself to what transpired, not
5 your state of mind, not what you are thinking, but what was
6 said to you and what you said and what you did.

7 Why don't you put a fresh question to the witness.

8 Q. We were talking about your duties and you mentioned
9 increased responsibilities for Dennis, is that correct?

10 A. Yes.

11 Q. What do you mean by responsibilities?

12 A. Well, once I started -- they wanted me to start learning
13 about how the restaurant was ran and how things behind the
14 scenes --

15 THE COURT: Who is they?

16 THE WITNESS: Paul and Dennis.

17 A. So that was part of me learning the restaurant and me
18 learning Glaze was, you should learn how to work the cashier.
19 You should learn how to pack the food to go. You should learn
20 how to deliver the food. Because this is important to your
21 position, even though my position ideally was to focus on
22 marketing. But because I wanted to learn everything about the
23 restaurant, I was ok with that for the time being, catering,
24 light event work. All of that together, that's -- over time
25 the responsibilities were added, but it all kind of branched

1 out from there.

2 Q. And when they said you should learn how to do the cashier,
3 what happened after they said that?

4 A. After they said that and after I had learned the basics of
5 it, they kind of assumed that I would substitute for a cashier
6 or I would be an additional cashier girl, especially during our
7 lunch rushes or packing that food to go.

8 Q. Did you work the cash register?

9 A. I did.

10 Q. How often?

11 A. Quite often.

12 Q. And with the other aspects of this that you should learn,
13 did you actually take over those responsibilities?

14 A. I did, when necessary.

15 Q. Example. Of what? Like what? Cashier, you said. You
16 were a cashier. What other things?

17 A. I was a cashier. If the garbage needed to be taken out, I
18 would take it out. If the tables need to be clean, if there
19 needed to be extra supplies, I would run down to Bowery and go
20 get them. I ran a lot of errands. I did a lot of quality
21 control in the restaurant just to make sure everything was of
22 the highest standard. I think my position, even though I
23 wasn't an official cashier girl, I had the mind-set --

24 THE COURT: Never mind the mind-set.

25 Q. Were there any other things other than what you just

mentioned now, actual physical things, dishes, anything like
that?

MR. O'DONOGHUE: Objection to leading.

THE COURT: Avoid leading.

(Continued on next page)

1 MR. NOHAVICKA: Yes, your Honor, I'll ask again.

2 BY MR. NOHAVICKA:

3 Q. Were there any other duties that you performed while you
4 were at Teriyaki?

5 A. Delivery.

6 Q. You did the delivery?

7 A. I did do delivery every once in a while.

8 Q. How often is every once in a while?

9 A. Once or twice a week.

10 Q. What were your hours when you first started working at
11 Glaze Teriyaki?

12 A. My hours when I first started working, since I was working
13 part time, it was like 20 to 25, at most 30 hours. When I
14 didn't have class I would show up.

15 Q. And were there times when you worked more than 30 hours a
16 week?

17 A. Yes.

18 Q. When were those times?

19 A. Those were probably after the initial internship period, so
20 after the first few months. And especially when I started
21 getting more responsibility, getting more accountability,
22 that's when I started to commit more hours. I came in, even
23 the days I had classes, I would come in right after class,
24 sometimes on the weekends as well.

25 THE COURT: So when was that?

1 THE WITNESS: After I would say after June or
2 July 2012, once school -- especially once school concluded for
3 the summer.

4 Q. Could you explain to the Court, from your first year at
5 working at Glaze Terry, what the hierarchy of management was at
6 the midtown restaurant?

7 A. You had your employees, so cashier or host, and then the
8 kitchen. But in terms of hierarchy of position, you had Paul
9 and Dennis, and that was it, and I was right below them.

10 Q. So were you part of the management or the lower part?

11 A. I'm not really -- in terms of management, you mean Paul and
12 Dennis?

13 Q. Yes.

14 A. To be honest, not in the beginning, but over time, yes.

15 Q. Yes?

16 A. Management.

17 Q. Management. Okay. I'm going to show you right now what
18 has been marked for identification as Plaintiff's Exhibit 1.

19 MR. NOHAVICKA: Your Honor, that's in Tab Number 1 in
20 the binder.

21 Q. And Jessica, you have Number 1 right in front of you. And
22 I just want you to take a look at that document, and can you
23 tell me what that document is?

24 A. It's my LinkedIn profile.

25 Q. Does it describe the time that you were at Glaze Teriyaki

1 and going backwards?

2 A. It does.

3 Q. And you prepared all this information on there?

4 A. Yes.

5 Q. And to this day, does it look like this now?

6 A. If it wasn't deleted.

7 Q. But at the time that you were at Glaze Teriyaki, that you
8 were working there?

9 A. Yes.

10 MR. NOHAVICKA: Your Honor, I offer this document as
11 Plaintiff's Exhibit 1.

12 THE COURT: Any objection?

13 MR. O'DONOGHUE: Yes, objection and voir dire, your
14 Honor.

15 THE COURT: Go right ahead.

16 MR. NOHAVICKA: Your Honor, may I be heard on that?
17 According to joint pretrial order, there's no objection to this
18 document.

19 THE COURT: Is that correct?

20 MR. O'DONOGHUE: The document has substantially
21 changed since that time, your Honor.

22 MR. NOHAVICKA: It's the only document that we ever
23 had.

24 THE COURT: I will allow the voir dire.

25 MR. O'DONOGHUE: Thank you, Judge.

1 BY MR. O'DONOGHUE:

2 Q. Good afternoon, Ms. Naldo.

3 As you know, my name is Kevin O'Donoghue. We met
4 before.

5 THE COURT: Ask the question.

6 MR. O'DONOGHUE: Yes, Judge.

7 BY MR. O'DONOGHUE:

8 Q. Ms. Naldo, the document in front of you has a date stamp on
9 it, does it not?

10 A. It does.

11 Q. What is that date, please?

12 A. For intern or for --

13 Q. No, at the top where it was printed out.

14 A. July 2012 to August 2014.

15 Q. I'm referring to the date at the top left corner. Do you
16 see that?

17 A. January 12, 2016.

18 Q. Isn't it true since January 12, 2016 you made changes to
19 this document?

20 A. Potentially, yes.

21 Q. Ma'am, I'm asking you --

22 THE COURT: Excuse me a second. Do you recall whether
23 you made changes to the document since January 12, 2016?

24 THE WITNESS: Yes, I update my LinkedIn.

25 Q. So what your attorney gave you to look at is not what is

1 actually on LinkedIn right now, isn't that true? You deleted a
2 lot of information that was on there in January 2012.

3 A. Can I explain?

4 My LinkedIn -- this is the second time my LinkedIn has
5 been -- I have that one position, integrated marketing and
6 brand manager, and for the second time it disappeared. The
7 intern stayed, but the second time it disappeared, so I had to
8 replace it with what I had before. And I couldn't find this
9 updated version from January 12, I could only find something
10 that was before that, so it's not -- I'm not changing it.

11 Q. Did you update it or not?

12 A. Sorry?

13 Q. You said you --

14 A. I did, because it disappeared.

15 Q. And it would be true, then, that what is before you is not
16 what is actually there now, correct?

17 A. I don't know. I honestly don't know.

18 Q. This document that you created and you said you wrote all
19 this, integrated marketing and brand manager, did you create
20 that title?

21 A. Yes.

22 Q. You were never given that title by anybody?

23 A. No.

24 MR. O'DONOGHUE: Your Honor, I renew my objection to
25 this document as it is not the same document that currently

exists on LinkedIn. In other words, it's inauthentic.

THE COURT: Do you have a follow-up question you want to ask?

MR. NOHAVICKA: With respect to voir dire, no, your Honor. I believe I asked all the questions for our foundation, which was basically that this is the document that was in effect at the time that she was at Glaze Teriyaki.

THE COURT: Let me see you both at sidebar for a minute.

Ladies and gentlemen, you can stand up and stretch.

(Continued on next page)

1 (At sidebar)

2 THE COURT: Am I correct there's no objection except
3 for a foundation objection?

4 MR. O'DONOGHUE: It's foundational, and it's not
5 accurate. She had to revise it substantially. So they took a
6 version that they liked from back in the day, but it's not the
7 current version.

8 THE COURT: Here's the problem: I would readily
9 sustain an objection to this document as an out-of-court
10 statement offered for the truth of its content. It's
11 self-serving --

12 MR. O'DONOGHUE: It is.

13 THE COURT: Excuse me, a second. I don't need you to
14 chime in on my rulings, Mr. O'Donoghue, do you understand?

15 MR. O'DONOGHUE: Yes, Judge.

16 THE COURT: So if you like what I'm saying, don't
17 start yessing me. You got that?

18 MR. O'DONOGHUE: Yes, Judge.

19 THE COURT: White noise, Flo, please.

20 But if the only objection is foundational, and all you
21 are offering it as the LinkedIn profile that was as of
22 January 12, 2016 --

23 MR. NOHAVICKA: Not --

24 THE COURT: What are you offering it as?

25 MR. NOHAVICKA: This was the version that was online

1 at the time that she was at Glaze Teriyaki.

2 THE COURT: I didn't hear that established.

3 MR. NOHAVICKA: I asked her.

4 THE COURT: I didn't hear that established.

5 MR. NOHAVICKA: I'm sorry, Judge.

6 THE COURT: That's why I asked you that. You may
7 have, but I didn't hear that and I don't recall that. But if
8 she adopts it, that's what you're offering it as, how was it
9 identified on your exhibit list, by the Bates number?

10 MR. NOHAVICKA: Yes, Exhibit 1, and it's the first
11 exhibit and also Bates 1.

12 MR. O'DONOGHUE: My objection, Judge, was twofold.
13 Number one, it is not an authentic true and accurate version of
14 a document that exists today.

15 Number two, as I stated --

16 THE COURT: Who says it has to be a true and
17 accurate --

18 MR. O'DONOGHUE: I have a print-out from today.

19 THE COURT: Excuse me, who says it has to be a true
20 and accurate copy of a document that exists today?

21 MR. O'DONOGHUE: It's being offered as proof of the
22 fact that this is essentially her online résumé. What I'm
23 saying is it's inauthentic.

24 THE COURT: I didn't hear that. He just said
25 something very different.

1 MR. O'DONOGHUE: Well then, your Honor --

2 THE COURT: Excuse me. You said something different.
3 It's not being offered as her --

4 MR. NOHAVICKA: Not her current résumé.

5 MR. O'DONOGHUE: Your Honor, this is a document that
6 she just testified not only did she create on her own, so it's
7 a self-serving document, she also testified just now that she
8 created the title. She was never even given that title. She
9 further testified that she had to revise it basically it's
10 inaccurate information. So what they're offering this to the
11 jury as is proof that she had this job and this title, and I'm
12 saying that's misleading to the jury as evidence and it's
13 improper, inauthentic evidence for a jury.

14 THE COURT: Now, listen, if you have a foundation
15 objection, your foundation objection is that it isn't in fact
16 what the witness said it is, I suppose. The witness said -- if
17 the witness said, and I will make you establish that this is
18 what she maintains is the online résumé while she worked at
19 Glaze Teriyaki --

20 MR. NOHAVICKA: Yes, your Honor.

21 THE COURT: -- I'm telling you I would in a heartbeat
22 sustain an objection to this document if it's an online résumé
23 from when she worked there. But the only objection you have
24 raised is a foundation objection, and she will have laid the
25 foundation.

1 MR. O'DONOGHUE: Your Honor, I made two specific
2 objections, foundational and as to authenticity as to the
3 document itself because it's inauthentic. It's a hearsay
4 document.

5 THE COURT: Hearsay -- is that correct, that he
6 objected on hearsay grounds? Because I will sustain it if you
7 did.

8 MR. O'DONOGHUE: I did on voir dire. Inauthentic is a
9 hearsay objection.

10 THE COURT: No, it's not, sir.

11 MR. O'DONOGHUE: I make that objection, now, your
12 Honor.

13 THE COURT: The question here is I was represented a
14 moment ago by plaintiff's counsel that you didn't object in
15 your joint pretrial order. Was that untrue?

16 MR. O'DONOGHUE: Your Honor, the joint pretrial order
17 were documents that each party intended to include. They
18 weren't fully marked or else we wouldn't be going through a
19 foundation process right now. These are documents that may be
20 offered at trial as exhibits, they were not agreed to and
21 stipulated on as exhibits.

22 THE COURT: That's not what I asked you. That's not
23 what the joint pretrial procedure provides for.

24 Listen, I don't need to do this with a jury here. Go
25 back and read the rules for the joint pretrial order. The

1 question is whether you objected and the ground that you
2 objected on. Did you object to the document?

3 MR. O'DONOGHUE: No, I'm objecting now.

4 THE COURT: Okay. If you had objected in the joint
5 pretrial order, I would now would be sustaining your objection.
6 Why shouldn't I deem your objection waived for the absence of
7 it in the joint pretrial order?

8 MR. O'DONOGHUE: Because it was made on record, it was
9 made in voir dire, and it's clearly misleading to the jury.

10 THE COURT: You're not understanding me.

11 MR. O'DONOGHUE: I am understanding.

12 THE COURT: I don't think you are. In other words,
13 the joint pretrial order process has no moment, because if you
14 don't object in the joint pretrial order but you object at
15 trial, the objection at trial supersedes the absence of the
16 objection in the joint pretrial order. That's what you're
17 urging upon me, and that's not law.

18 MR. O'DONOGHUE: There's no way to know if they would
19 actually offer something at trial until they do. Very
20 frequently things go into the exhibit list and the pretrial
21 order that never actually make it before the Court.

22 THE COURT: Very true. Go back and look at the rules,
23 and if you have an objection -- that's true, not everything
24 that's on the exhibit list gets offered. You were given an
25 opportunity -- you're required to list it, and you're given an

opportunity to object.

MR. O'DONOGHUE: I may have objected. I don't have it in front of me.

THE COURT: You should look at it. If you properly objected, I sustain your objection. If you didn't, it's overruled.

(Continued on next page)

1 (In open court)

2 THE COURT: Appears to be page 5, Roman Numeral 9.

3 You may ask your foundational question.

4 BY MR. NOHAVICKA:

5 Q. Jessica, the document that you're looking at right now that
6 you identified as the LinkedIn page, forgive me if I asked you
7 this, was this how your document looked -- was this how the Web
8 page looked while you were working at Glaze Teriyaki?

9 A. No.

10 THE COURT: Sustained.

11 MR. O'DONOGHUE: Thank you, Judge.

12 THE COURT: Next question.

13 Q. You heard counsel mention integrated marketing and brand
14 manager, and you said that you created that.

15 A. I did create it, yes.

16 Q. And what does it mean exactly?

17 A. Integrated marketing is basically a combination of all the
18 various types of marketing and different functions with public
19 relations, sales promotion, experiential, guerilla, social
20 networking. I did it at all, and it all falls under the
21 umbrella integrated marketing and utilizing different
22 strategies, different platforms, doing all of these things in
23 order to complement each other and complement the brand
24 strategy.

25 Q. And was that specific title on your LinkedIn page at the

1 time you worked -- just that title, was that on your LinkedIn
2 page at the time you worked at Glaze?

3 A. Yes.

4 MR. O'DONOGHUE: Objection, leading question.

5 THE COURT: Rephrase it and avoid leading.

6 Q. Did you indicate anywhere online that you had this
7 integrated marketing and brand manager position?

8 MR. O'DONOGHUE: Objection, leading question.

9 THE COURT: Sustained.

10 Q. At the time you worked at the Glaze Teriyaki, what did you
11 represent yourself to be online?

12 A. Marketing and brand development.

13 Q. And that's the name that you -- that was the name that you
14 provided, that you created?

15 A. Yes. I didn't put anything specific, I just put what I
16 focused on and specialized in.

17 Q. And to your knowledge, did Glaze Teriyaki have access to
18 the internet where they would find that information on
19 LinkedIn?

20 A. Yes.

21 MR. O'DONOGHUE: Objection to relevance.

22 THE COURT: Sustained.

23 Q. Is there anything that you believe is inaccurate with
24 respect to that description of what you did while you were at
25 Glaze Teriyaki the entire time you were there?

1 MR. O'DONOGHUE: Objection to form of the question.

2 THE COURT: I'll allow it.

3 A. No.

4 Q. Now were you required to have a business card while you
5 were working at Glaze Teriyaki?

6 A. Why he.

7 Q. Did you have business cards while you were an intern at Red
8 Bull?

9 A. I did not.

10 MR. O'DONOGHUE: Objection to relevance.

11 THE COURT: Overruled.

12 Q. I'm showing you now what we have had premarked for
13 identification and not objected to in the JPTO as Plaintiff's
14 Exhibit 2. Can you take a look at that?

15 Got that?

16 A. Yes.

17 Q. Can you please tell me what that is?

18 A. The company credit card.

19 Q. And how is it that you know it's a company credit card?

20 A. It says Glaze Teriyaki franchise as well as my name.

21 Q. And is that your signature on the card?

22 A. Yes.

23 Q. And this is the card you had while you were at Glaze
24 Teriyaki?

25 A. Yes.

MR. NOHAVICKA: Your Honor, I offer Plaintiff's Exhibit 2 for identification into evidence.

THE COURT: Received.

MR. O'DONOGHUE: Objection.

THE COURT: There was no objection voiced. Is it objected to in the joint pretrial order?

MR. O'DONOGHUE: No, I'm objecting because counsel failed to lay a proper foundation for this record.

THE COURT: Go ahead.

BY MR. NOHAVICKA:

Q. You have Exhibit 2 for identification in front of you?

A. Yes.

Q. What is this document?

A. The company credit card.

Q. And how is it that you know it's a company credit card?

A. It has the title Glaze Teriyaki franchise as well as my full name.

Q. And did you sign this document?

A. I did.

Q. Is that your signature on the document?

A. It is.

Q. Did you use this document while you were employed at Glaze Teriyaki?

A. Yes.

Q. And who issued this document to you?

1 A. Paul and Dennis.

2 Q. Did you have authorization from them to use this document?

3 A. Yes.

4 MR. NOHAVICKA: Your Honor, I now offer it into
5 evidence.

6 THE COURT: Any objection?

7 MR. O'DONOGHUE: Yes, your Honor.

8 THE COURT: Basis?

9 MR. O'DONOGHUE: Once again this is -- they have still
10 not actually identified what the document is. The document is
11 a representation of something else that clearly could not be
12 used the way that they're stating it could be used.

13 THE COURT: Let me see the document.

14 Is this a copy of the card?

15 THE WITNESS: Yes.

16 THE COURT: It's a photocopy of the card.

17 THE WITNESS: Yes.

18 MR. O'DONOGHUE: That was never said, your Honor.

19 THE COURT: Any objection?

20 MR. O'DONOGHUE: No.

21 THE COURT: Received.

22 (Plaintiff's Exhibit 2 received in evidence)

23 MR. NOHAVICKA: Your Honor, I would like to publish it
24 to the jury.

25 THE COURT: You may.

1 BY MR. NOHAVICKA:

2 Q. And could you just describe to the jury what you see now on
3 your screen what this document is? It's a copy of something,
4 right?

5 Now the jury can see what it is that you have now just
6 identified, but can you please, for the jury, explain what this
7 is.

8 THE COURT: You may proceed, go ahead.

9 MR. NOHAVICKA: Could you ask the jury if they're able
10 to see it now?

11 THE COURT: Ladies and gentlemen, are you able to see
12 it.

13 JUROR: It was --

14 THE COURT: It was on but it's not on now.

15 JUROR: It's back on.

16 THE COURT: Do you have it, ladies and gentlemen?

17 Very good.

18 BY MR. NOHAVICKA:

19 Q. Please tell the jury what this is.

20 A. My company credit card with Glaze.

21 Q. And when did you get this company credit card?

22 A. In the last year of my employment with them.

23 Q. Can you tell the jury what year that was?

24 A. 2014.

25 Q. And for what purposes did you use the credit card?

1 A. Supplies, errands, anything in particular or relevant to
2 marketing. If I needed to order things from the printers, if I
3 needed to order things, like collateral, any promotional
4 material, whether it's paper or sunglasses or something fun, I
5 was given the authority to use that card for those types of
6 things.

7 Q. And did you ever use it for personal reasons?

8 A. No.

9 Q. I'm just going to put up the second page of that, and tell
10 the jury what that is on the back of that credit card.

11 A. My signature.

12 Q. And you signed that yourself?

13 A. I did.

14 Q. I would like to now look at Exhibit Number 3 for
15 identification. Do you see that document?

16 A. I do.

17 Q. And can you tell me what it is?

18 A. It's my business card.

19 Q. Is it the business card or is it a copy?

20 A. It's the business card or a copy of the business card.

21 Q. And where did you get this card?

22 A. I got the card from our designer.

23 Q. And who is the designer?

24 A. Richard Norris.

25 Q. Is he affiliated with Glaze Teriyaki?

1 A. As a third party design agency.

2 Q. And did you have the permission of Glaze Teriyaki to have
3 this card made for you?

4 A. It was their idea.

5 Q. When you say "they," who is they?

6 A. Paul and Dennis.

7 Q. Both of them here?

8 A. Yes.

9 Q. They wanted you to have a business card?

10 A. Yes.

11 MR. O'DONOGHUE: Objection, leading.

12 THE COURT: Yeah, the last one, they wanted to you
13 have a business card, is stricken, as is the answer.

14 Next question.

15 Q. Who wanted you to have a business card?

16 A. Paul and Dennis.

17 Q. And Paul and Dennis from where?

18 A. From Glaze.

19 Q. And did they tell you why they wanted you to have a
20 business card?

21 A. As I was getting more responsibility and meeting more
22 people for cross promotional purposes or just catering clients,
23 anyone -- it was kind of getting old me giving them my personal
24 gmail address, and I didn't think they would take me seriously
25 if I was cold emailing these potential clients from a gmail.

And so we figured, as well as handing -- I needed a business card if I met people, so it was a good idea for me to be able to identify myself and also show my legitimacy as an employee and representative of Glaze.

Q. And is Plaintiff's Exhibit 2 for identification a fair and accurate copy of the actual business card that you were issued by Glaze?

A. Yes.

Q. And when were you issued this card?

MR. O'DONOGHUE: Objection, it's Exhibit 3.

MR. NOHAVICKA: Sorry, thank you, counsel.

Q. Exhibit 3.

A. Towards the end of my -- in the summer of 2012, towards the end of my internship.

MR. NOHAVICKA: Your Honor, I'm offering Plaintiff's Exhibit 3 for identification into evidence as Plaintiff's Exhibit 3.

THE COURT: Any objection?

MR. O'DONOGHUE: No objection.

THE COURT: Received.

(Plaintiff's Exhibit 3 received in evidence)

MR. NOHAVICKA: May I publish it, your Honor?

THE COURT: You may.

BY MR. NOHAVICKA:

Q. And tell us what is depicted now. I hope it's on your

1 screen. Is it?

2 MR. NOHAVICKA: It's not on.

3 Q. You have the document in front of you? Explain what the
4 two separate parts are for the jury.

5 A. The business card?

6 Q. Yes.

7 A. The first part is the front of the business card with the
8 logo and design of the statue of liberty and a chicken, and on
9 the back is another version of the logo as well as my name, my
10 company email address, my personal phone number, and the
11 address of the first Glaze Teriyaki.

12 Q. Could you read to us the email address?

13 A. Jessica@glazeteriyaki.com.

14 Q. And who decided that you would have a company email
15 address?

16 A. Dennis and Paul.

17 Q. The defendants?

18 A. Yes.

19 Q. And when did they decide that?

20 A. During my internship.

21 Q. And were you told why you should have that?

22 A. I think I brought it up, because as I said earlier, I was
23 starting to interact with more clients, more people in
24 association with Glaze, and so I needed a real email address
25 that said I was legitimate and a real representative of Glaze

1 versus using my personal gmail.

2 Q. Was anything -- were you given any -- withdrawn.

3 Were you given any instructions with respect to who or
4 when you should give this card out?

5 A. No.

6 Q. And did you in fact give it out?

7 A. Yes.

8 Q. Who did you give it out to?

9 A. Whomever I met that I felt would be a great connection to
10 have, especially professionally or in relevance to any projects
11 we wanted to do with Glaze, if they were organizations, if they
12 were charities, if they were -- trying to think, organizations,
13 charities, schools. We used to go to NYU a lot and try to
14 market to them. Whoever I would note along the way that I felt
15 I could really connect with and do something cool with, I gave
16 my card.

17 Q. And did there come a time you were told not to give out the
18 card?

19 A. No.

20 Q. So I want you to take a look now at Exhibit 5 for
21 identification. Do you see that document?

22 A. Got it.

23 Q. Can you please tell the jury what this document is that
24 you're looking at?

25 A. The first one?

1 Q. This is 0013.

2 A. Okay. The first document that I'm looking at is the social
3 media proposal that I made prior to our fourth location, third
4 or fourth location of the San Francisco opening.

5 Q. San Francisco?

6 A. Yes.

7 Q. Did Glaze Teriyaki have a San Francisco restaurant as well?

8 A. Yes, two.

9 Q. When did you become aware of this?

10 A. The grand opening for this was about April 2013.

11 Q. Were you somehow involved with this?

12 A. Actively, yes.

13 Q. What was your involvement?

14 A. The involvement for it was -- a lot of it was social media
15 and marketing. Our partner from San Francisco who was running
16 that side of things from that coast wanted my help in
17 establishing a strategy for that side or for that restaurant as
18 well as for the grand opening. So I made a social media
19 proposal wanting to utilize all the different platforms, all
20 the different kind of ideas we had in terms of brand messaging
21 and meet ups and planning.

22 Q. So is that what Plaintiff's Exhibit 5 for identification is
23 then?

24 MR. O'DONOGHUE: Objection, leading.

25 THE WITNESS: Sorry?

1 THE COURT: Rephrase.

2 Q. I'm talking about Plaintiff's Exhibit 5 for identification.

3 A. Yes.

4 Q. And you were describing what it was.

5 A. Yes.

6 Q. And is it anything more than what you just said? Is it
7 anything else other than a social media --

8 MR. O'DONOGHUE: Objection, leading.

9 THE COURT: No, it's based on the testimony that was
10 delivered.

11 A. Yes, there are some kind of cold emailing or follow ups
12 with catering, me reaching out to potential clients or
13 customers that would like our business for their law firms or
14 for their offices I would reach out and try to create
15 something.

16 THE COURT: You're being asked about a document.

17 THE WITNESS: I have a few documents, I'm sorry.

18 THE COURT: You're only being asked about one
19 document.

20 Q. We're talking about the social media proposal.

21 A. Okay.

22 Q. Did someone request that you prepare this document?

23 A. No, I did it myself.

24 Q. For whom did you prepare it?

25 A. I prepared it for Paul for Dennis, for Richard, for the

1 whole team to look at.

2 Q. We know who Paul is --

3 A. Paul and Dennis.

4 Q. -- and we know who Dennis is, but you are mentioning other
5 names. Richard?

6 A. Richard Norris is our third designer, Ian and Jessie are
7 the partners in San Francisco.

8 Q. You said that you presented this to Paul and to Dennis and
9 to Richard and to Jessie?

10 A. Yes.

11 Q. What was done as a result of that?

12 A. They blew it off.

13 MR. O'DONOGHUE: Objection, leading, and objection,
14 non-responsive.

15 MR. NOHAVICKA: I withdraw the question.

16 THE COURT: All right. And the answer is stricken.

17 Q. Were you required to go -- sorry, Jessica, you don't have
18 to look at that anymore.

19 THE COURT: Listen to words of the question, if you
20 would.

21 THE WITNESS: Okay.

22 Q. Were you required to go to San Francisco?

23 A. I was offered to go to San Francisco, yes.

24 Q. When you say you were offered, what does that mean?

25 A. They knew I wanted to get involved on the West Coast, or at

1 least to help with the grand opening, so they offered the
2 opportunity to help out with that.

3 Q. And did you capitalize on that?

4 A. Yes.

5 Q. And what did you do?

6 A. I flew over for the week, and I assisted in that grand
7 opening and the preparations of it as well as the execution of
8 it.

9 Q. And how did you get to San Francisco?

10 A. Through purchasing a ticket, a flight ticket.

11 Q. And did you go there?

12 A. I did.

13 Q. What did you do when you were there?

14 A. When I got to San Francisco?

15 Q. Yes.

16 MR. O'DONOGHUE: Objection.

17 THE COURT: Overruled.

18 A. Got to San Francisco, did everything -- at least for what I
19 did it was -- I did a lot of documenting of the activity
20 around -- for social media purposes for online marketing
21 purposes, I did a lot of documenting, I did a lot of
22 photographing, a lot of kind of scoping out the restaurant
23 because we had a lot of marketing material we needed to put
24 around.

25 THE COURT: Avoid the "we."

1 Go ahead.

2 Q. You, what did you do?

3 A. Okay. I got to San Francisco, I did a lot of marketing
4 for -- at least that was my understanding, that's what I wanted
5 to do. And I went to the printers, I designed some material
6 for the inside of the restaurant, but then I also ended up
7 running a lot of errands. So I would borrow the partners' car
8 and go to the restaurant supply store, I would go to the
9 printers, I would run a lot of errands in addition to a lot of
10 the marketing duties. When I got to the restaurant I did a lot
11 of photography, I did a lot of art design, I did a lot of the
12 assisting with setting up, cleaning up on the day of the grand
13 opening, I helped out busing.

14 Q. When you say "busing," could you please describe that?

15 A. Cleaning tables, trash, putting things away, busing tables.

16 Q. Why did you never -- withdrawn.

17 Did you ever ask to get paid --

18 A. I did.

19 Q. -- from Paul or Dennis?

20 A. I did.

21 Q. And what did they say?

22 A. It was always next time or let's talk next week, we want to
23 pay you, but either we're waiting on an investor and it's going
24 to hit big, Jess, just wait, just wait. It was always: Just
25 wait. And once in a while they would give me like a couple of

checks, a few checks every four or five months to kind of keep me around, but it was never something that was sustainable, it just always felt like an allowance.

Q. How many times would you say you asked either of them for some kind of compensation for the work that you did?

MR. O'DONOGHUE: Object to the form of the question.

THE COURT: Sorry?

MR. O'DONOGHUE: I have an objection to the form of the question. He said how many times would you say you asked, he did not ask her how many times she actually asked.

THE COURT: Rephrase.

Q. How many times did you ask to get paid?

A. I asked a few amount of times, like several times.

Q. I want you to take a look at what has been marked Plaintiff's 6 for identification. That's last one. Do you see that document?

A. Mm-hmm.

THE COURT: You have to answer in words.

A. Yes.

Q. What is that document?

A. It's an email I sent out --

Q. Don't tell us what it says, just say what it is.

A. It's an email.

Q. And who is the email from?

A. It's an email from me.

1 Q. And who is it to?

2 A. To Paul, and I CC'd Dennis.

3 Q. When was this sent?

4 A. May 31st, 2013.

5 Q. When you say it was sent to Paul, I'm assuming of course
6 Paul Krug, who is here?

7 A. Yes.

8 Q. How do you know it was sent to him?

9 A. Sorry?

10 Q. Is his email address on there?

11 A. Yes.

12 Q. Is that your email address?

13 A. It is my email address.

14 Q. And you sent that to him?

15 A. I did.

16 MR. NOHAVICKA: Your Honor, I offer Plaintiff's 6 for
17 identification into evidence.

18 THE COURT: Any objection?

19 MR. O'DONOGHUE: Objection.

20 THE COURT: Basis?

21 MR. O'DONOGHUE: I have a variety of objections to
22 this document. Firstly, the document itself is a forwarded
23 email --

24 THE COURT: Let me first look at the joint pretrial
25 order.

MR. O'DONOGHUE: It's not there, your Honor. There's no objection.

THE COURT: It's not in the joint pretrial order?

MR. NOHAVICKA: It is there, but there's no objection to it.

THE COURT: Overruled.

MR. O'DONOGHUE: Your Honor, if you look at the document itself, it is clearly an inappropriate document. What it is listed as on the joint pretrial order is not what is before the witness.

THE COURT: Show me the document that you understood, Mr. O'Donoghue, was Item 6 under 9A. Bring that up to the side bar if you will, please.

Ladies and gentlemen, we'll take a ten-minute break. Please don't discuss the case.

MR. NOHAVICKA: This is the last document.

THE COURT: All right. Hold off. We can take your break after the examination is completed. That probably makes more sense.

(Continued on next page)

(At sidebar)

MR. O'DONOGHUE: I can't find the clean document. My point, your Honor, is that if you look at the document itself, this is from Ms. Naldo to Yesy Sanchez. This is a forwarded email. You can see it says forwarded message. There's no way to tell that this is accurate. You could doctor this anyway you want. There's no way to tell. It's a stub that cuts off a chain of emails. It's incomplete and it's not the original document. If they wanted to offer her direct e-mail to my clients, that would make sense. And I know emails is a weird thing that we're trying to figure out evidence-wise still, but that forward, redacted information, et cetera.

THE COURT: The witness testified this is -- the text below is the mail she sent. I will be happy to instruct the jury that what appears above the words from Jessica Naldo, date May 31, 2013, is not in evidence.

MR. O'DONOGHUE: If you look here also, your Honor, it clearly is cut off mid sentence. There's more to it.

THE COURT: There may very well be. You did not object. That may have been the email that was sent cut off in mid sentence. I read many emails cut off in mid sentence.

MR. O'DONOGHUE: Your Honor, this is not the email showed in her deposition.

THE COURT: Mr. O'Donoghue, I have given you the opportunity. I have in front of me the joint pretrial order,

1 this is Number 6, objection, blank, basis for objection, blank.

2 I have given you an opportunity to -- don't start
3 formulating your sentences. I have given you an opportunity to
4 show me what you think the Exhibit 6 is, and you told me that
5 you haven't been able to do it. I understand that. I have
6 heard the witness's testimony. The witness has identified this
7 as an email that she sent, and it's received.

8 (Continued on next page)

1 (In open court)

2 THE COURT: Ladies and gentlemen, you will see on
3 Exhibit 6 in a moment that there is material above the line
4 Jessica Naldo, date May 31, 2013 at 9:39:03 a.m. The material
5 above that is not being offered into evidence and it's not
6 being received into evidence and you're to disregard it. It's
7 the email part that is below that. Go ahead.

8 MR. NOHAVICKA: Your Honor, I formally --

9 THE COURT: You're offering 6 and over objection it's
10 being received.

11 (Plaintiff's Exhibit 6 received in evidence)

12 MR. NOHAVICKA: And permission to publish it.

13 THE COURT: Granted.

14 BY MR. NOHAVICKA:

15 Q. Jessica, you testified earlier you sent an email showing
16 concern about your compensation, is that fair?

17 A. Yes.

18 Q. And is this the email that you're talking about?

19 A. This is.

20 Q. And could you please go to the section -- the portion of
21 the email where you do make your concerns known to your
22 employers, and could you read it to the jury?

23 A. The whole thing?

24 Q. Not the whole thing, but just the important part there
25 where you bring it to their attention?

1 A. Is there a specific --

2 Q. The jury never saw this before.

3 A. Could I read the whole thing?

4 Q. Sure.

5 A. Paul and Chef: Hey, Guys, I'm hoping to talk with you --

6 THE COURT: You don't have read the whole thing. The
7 jury has it. If there's a portion of the document that you
8 want to ask the witness a question about, you can do that.

9 Otherwise, ladies and gentlemen, you will have all the
10 exhibits in the case in the jury room. At the conclusion of
11 the case you can read it, or you can read it now on the screen.

12 MR. NOHAVICKA: In that case, your Honor, I have no
13 further questions, and I pass the witness.

14 THE COURT: All right. Ladies and gentlemen, now
15 we're take our mid-afternoon break. Please do not discuss the
16 case among yourselves or with anyone. We'll be back in action
17 in ten minutes. Thank you.

18 (Jury not present)

19 THE COURT: See you all in ten minutes.

20 (Recess taken)

21 (Continued on next page)

22

23

24

25

THE COURT: Please take the witness stand and bring the jury in.

(Jury present)

THE COURT: Please be seated.

Mr. O'Donoghue, you may cross-examine.

MR. O'DONOGHUE: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. O'DONOGHUE:

Q. Good afternoon, Ms. Naldo. Ms. Naldo, earlier your attorney asked you about your education at St. John's. You have not actually graduated yet, is that correct?

A. No.

Q. It is not correct --

A. I'm sorry. I did not, no.

Q. You said you have two classes left, correct?

A. Yes.

Q. You started in 2007, is that right?

A. Yes.

Q. And during the period that you worked allegedly for Glaze Teriyaki, which was somewhere approximately February 2012 through August of 2014, you were a student at St. John's University, correct?

A. Yes.

Q. And you said that you were taking a full course load, is that right?

1 A. Nine to 18 credits, yes.

2 Q. Were you receiving student loans at the time?

3 A. Some, yes.

4 Q. And were you required as a condition of your student loans
5 to take a certain number of credits per semester?

6 A. Yes.

7 Q. And if you dropped a class or withdrew from a class, would
8 you receive a refund for that class that you paid for?

9 A. I think if I did it in time, yes.

10 Q. And so when you began working allegedly for Glaze as an
11 intern in the fall of 2012, do you know how many credits you
12 took that semester?

13 A. I don't recall.

14 Q. Did you frequently withdraw from classes when you were in
15 college?

16 MR. NOHAVICKA: Objection, your Honor, relevance.

17 THE COURT: I'll allow it on cross-examination. Go
18 ahead.

19 A. I did.

20 Q. And did you receive a number of Fs as a result in other
21 classes?

22 A. I did.

23 Q. In the fall of 2012, if I told you that you withdrew from
24 four courses and failed a fifth, would that surprise you?

25 A. No.

1 Q. And that would be zero credit hours, correct?

2 A. Ok.

3 Q. And then in the spring of 2013, if I told you you
4 registered for six classes, withdrew from two and failed two,
5 would that surprise you?

6 A. No.

7 Q. That would be six credits?

8 A. Ok.

9 Q. And then in the fall of 2013, you received 12 credits and
10 you failed one class and you withdrew from another. Does that
11 sound accurate to you?

12 A. I don't recall, but ok.

13 Q. And then in the spring of 2014, which would have been the
14 last semester that you worked with Glaze, apparently, you
15 registered for three and withdrew from three for zero credits.
16 Does that sound accurate to you?

17 A. Sure.

18 Q. Earlier you told us that you were in school full time and
19 you had been juggling work and school but in reality you
20 weren't really taking that many classes in this time period,
21 correct?

22 A. I did. But, like you said, I would withdraw or it didn't
23 work out.

24 Q. Except for the fall of 2013, you only actually completed
25 three classes in two years, correct? You are not sure? And so

1 it's now been nine years since you began college, correct?

2 A. Ok.

3 Q. And you are how many credits short, six?

4 A. Yes.

5 Q. Did the course schedule prevent you from working certain
6 hours?

7 A. The course schedule?

8 Q. You said you didn't necessarily not go to some of these
9 classes; they just didn't work out. Am I wrong to assume that
10 you went to some of them but never finished them?

11 A. Yes, sure.

12 Q. As a result of being in school full time, did that affect
13 your ability to work certain hours with any other company,
14 including Glaze?

15 A. I think me working for Glaze and being as committed as I
16 was, it affected my school, unfortunately.

17 Q. You put your unpaid job over your college education?

18 A. Unfortunately.

19 Q. I just want to be clear. You said you began work somewhere
20 in February of 2012, right, as an intern?

21 A. Yes.

22 Q. And then the first and apparently the only e-mail
23 documentation or other documentation you have where you
24 requested to be paid is what your attorney showed you before he
25 sat down, which was from May of 2013, right?

1 A. Yes.

2 Q. In the first 15 months of your employment there is no other
3 documentation where you asked to be paid, is that right?

4 A. Not that I know of.

5 Q. And subsequent to that, from May of 2013 to the end of your
6 alleged employment, which I think we agree was about August of
7 2014, another 15 months, give or take?

8 A. Ok.

9 Q. You never had another document or any other e-mail that
10 would show that you requested payment, correct?

11 A. We had discussions and, unfortunately, I do have e-mails
12 from 2014. But after I left, my access to that account was
13 taken away, so I was never able to provide those.

14 MR. O'DONOGHUE: I am going to move to strike as
15 nonresponsive to my question.

16 THE COURT: I'll allow it to stand, but you have to
17 listen to the question and answer the question that's asked of
18 you. Ok?

19 THE WITNESS: Ok.

20 THE COURT: Thank you.

21 Q. It's a yes or no question, ma'am. Do you have any other
22 documentary proof, other than that one e-mail, that you can
23 produce to us today that shows that you asked to be paid at any
24 other time?

25 A. That was all I could provide.

1 Q. The one e-mail?

2 A. Just that one e-mail.

3 Q. Was e-mail your primary way of communicating with the
4 principals of Glaze?

5 A. In terms of?

6 Q. How did you communicate with the owners?

7 A. In person.

8 Q. And how often were you there?

9 A. A few times a week.

10 Q. And how many hours each time?

11 A. As an intern or after being an intern?

12 Q. You can break it down however you would like.

13 A. As an intern I was part time and that was 20 to 30 hours a
14 week, and then after I was an intern I would go in more often
15 and that would be about 40. It increased as -- the longer I
16 worked there.

17 Q. But you don't have any records that show the hours you
18 worked, correct?

19 A. Unfortunately, there are no records.

20 Q. You don't have a punch clock or pay stubs or anything like
21 that?

22 MR. NOHAVICKA: Objection, your Honor. She is not the
23 employer.

24 THE COURT: Overruled. But I'll sustain it as to, or
25 anything of the like.

1 MR. O'DONOGHUE: I'm sorry. I'll be more specific,
2 your Honor. I'll break it down question by question.

3 Q. Did you punch a clock or point of sales system, anything
4 like that, to record the hours that you worked?

5 A. No. They never provided me that.

6 Q. Did you keep a Google spreadsheet or an Excel spreadsheet
7 of your hours?

8 A. Random notes here and there, but no.

9 Q. You don't have those, right?

10 A. When you say hours, do you mean hours inside the
11 restaurant?

12 Q. I would love to see anything that shows any hours you
13 worked. Do you have anything that shows the hours you worked?

14 A. I don't have any hours, no.

15 Q. You don't have a Word document, e-mail, spreadsheet,
16 anything that would document the hours you worked, right?

17 A. No.

18 Q. You said before that you worked, you did things like you
19 were a cashier, you bussed tables, you did deliveries, that
20 sort of thing, correct?

21 A. Yes.

22 Q. The other people who worked at Glaze in the restaurant, did
23 they punch in and punch out daily?

24 A. They did.

25 Q. And they had pay stubs, paychecks, right?

1 A. Yes.

2 Q. You've seen them from ADP or some other company, correct?

3 A. Yes.

4 Q. And everyone else, every other employee at all three
5 restaurants that you're aware of, would swipe in and swipe out
6 daily, correct?

7 A. Those who were cashiers or kitchen employees, yes, or
8 managers.

9 Q. All of them punched in and punched out, correct?

10 A. Cashiers and kitchen employees and managers, yes.

11 Q. And they all received paychecks?

12 A. Yes.

13 Q. Biweekly?

14 A. That, I don't know, sorry.

15 Q. But you did not?

16 A. No.

17 Q. When you were at the company, can we agree about 30 months
18 is the time period we are talking about?

19 A. Sure.

20 Q. What other countries did you travel to during that time?

21 Do you need some help?

22 A. Sure.

23 MR. NOHAVICKA: Objection. Assumes a fact not in
24 evidence.

25 THE COURT: Rephrase it.

1 Q. You traveled to Mexico at one point while you worked for
2 Glaze Teriyaki, correct?

3 A. Yes. It was a family trip.

4 Q. Did you have to ask permission to go on vacation?

5 A. Yeah. I asked for permission out of courtesy.

6 Q. Is there an e-mail or something that shows that?

7 A. Probably from the past. I am not sure if it's in there.

8 Q. Did you go to Belize at one point?

9 A. Yes.

10 Q. Do you know what year that was?

11 A. April, May 2014.

12 Q. Did you ask permission for that trip?

13 A. I brought it up most likely. I'm not completely sure.

14 Q. How long were you there for?

15 A. A week.

16 Q. How long were you in Mexico for?

17 A. A week.

18 Q. Did you go to Savannah, Georgia, at some point?

19 A. Yeah.

20 Q. Do you know how long you were there for?

21 A. Maybe a week.

22 Q. Did you ask permission to go on that trip?

23 A. I let them know.

24 Q. When you say you let them know, in other words, you would
25 say, hey, guys, I am going to go out next week, I am going on a

1 trip. You wouldn't say: I need to take a week off.

2 A. I gave them a heads-up.

3 Q. Did you go to Seattle regularly while you were at Glaze
4 Teriyaki?

5 A. Yeah. To see my family.

6 Q. About how many times a year do you think you did that?

7 A. If I was lucky, twice.

8 Q. For 2012, 2013, 2014, about twice a year?

9 A. Once or twice a year.

10 Q. For about a week?

11 A. More or less, the holidays.

12 Q. Did you have occasion to go to California more than once
13 while you were there?

14 A. San Francisco.

15 Q. You tell me.

16 A. I went to San Francisco for the grand opening. I stopped
17 in San Francisco when I stopped in Lake Tahoe for New Year's.
18 I've been to California a couple of times, yes.

19 Q. You went to Lake Tahoe, correct?

20 A. For New Year's, yes.

21 Q. That's in Nevada?

22 A. Yes.

23 Q. Anywhere else you can recall you traveled to between 2012
24 to 2013, while you were allegedly working for the company?

25 A. I am not sure.

1 Q. Did you regularly take trips, weekend trips, to go to music
2 festivals and things like that?

3 A. On the weekends.

4 Q. You said before you worked seven days a week, right?

5 A. Yes.

6 Q. Weekends --

7 A. I mean, I could work seven days a week, yes. Five days are
8 the actual work days.

9 Q. In other words, you have a flexible schedule. If you
10 wanted to work Sunday and not work Tuesday --

11 A. I had a remote schedule.

12 Q. Weekends would count as work days potentially, right?

13 A. I guess, if I was a cashier.

14 Q. Were you a cashier? I thought you were marketing --

15 A. I thought I was, too.

16 Q. Interesting.

17 MR. NOHAVICKA: Your Honor, I am objecting to counsel.
18 I don't know if you are hearing his comments under his breath.
19 I'm objecting and asking him to stop.

20 THE COURT: Mr. O'Donoghue, knock it off.

21 MR. O'DONOGHUE: Thank you, Judge.

22 Q. Ms. Naldo, let's talk about your relationship with your
23 employer. Were you required to work full time?

24 A. No. But I was asked to come in a lot.

25 Q. I am going to ask you to answer the questions with yes or

1 no.

2 A. No.

3 Q. Did the company give you set work hours or set schedules
4 where you had to be at the restaurant or anywhere else?

5 A. There was no set schedule.

6 Q. Were you required to appear for trainings or meetings
7 weekly, daily, monthly?

8 A. We would have meetings every once in a while, yes.

9 Q. Were you required to be at specific meetings? There is a
10 10 a.m. Monday meeting and you have to be there, or no?

11 A. If we talked about it, I would show up, yes.

12 Q. What about trainings, did you ever have to attend a
13 training?

14 A. I was never trained.

15 Q. The people who work in the restaurants, they go to
16 trainings and meetings on a regular basis, don't they?

17 A. They are managers and cashiers.

18 Q. They have trainings and meetings?

19 A. For their specific position.

20 Q. But you didn't have those?

21 A. No.

22 Q. Did you have a direct supervisor who managed your work on a
23 regular basis or did you just sort of submit things on a
24 when-available basis?

25 A. I would get approval from Dennis or Paul, but never had

1 really direct supervision.

2 Q. Did they give you a cell phone or a computer or any other
3 tools or equipment that you would need?

4 A. No. Just use my own personal electronics.

5 Q. You didn't receive a salary or you didn't receive hourly
6 payment. That's why we are here, correct?

7 A. Correct.

8 Q. You didn't get commissions if you booked a catering job or
9 anything like that?

10 A. I would be able to keep my tips if I delivered something,
11 but that was like \$15 a day.

12 Q. You said you went to San Francisco. The company paid for
13 your plane ticket, correct?

14 A. They did.

15 Q. They paid for one night in a hotel in San Francisco?

16 A. One night, yes.

17 Q. Then you stayed with your family in a job share the rest of
18 the time, correct?

19 A. My mom came to visit me in San Francisco, so I stayed in a
20 time share that she had arranged for herself.

21 Q. Did you have to submit written reports to the owners on a
22 regular basis -- excuse me -- on any basis?

23 A. It wasn't required, but I did. I would send them updates.

24 Q. Updates by e-mail or were they formal written reports?

25 A. By e-mail or I would have something typed up and I would

1 present it to them in person. It was usually easier to present
2 it in person because sometimes they didn't respond to my
3 e-mails, so it was easier to get a response if I happened to be
4 face to face.

5 Q. Could you quit at any time, as far as you know?

6 A. Yeah.

7 Q. Could you have been terminated at any time, as far as you
8 know?

9 A. Yeah.

10 Q. Were you under any contract to work there?

11 A. No contract.

12 Q. And do you consider what you did to be an essential part of
13 what Glaze did for work as the business of Glaze?

14 A. I do.

15 Q. Now, you know if when you stopped working there they
16 replaced you?

17 A. I know that when I left they ended up hiring someone to
18 take over my social media or marketing duties that was part of
19 my position when I was at Glaze.

20 Q. Before you worked there, was someone else doing that?

21 A. No. It was me.

22 Q. Do you know how long the company was in operation before
23 you came on in August of 2012?

24 A. I think about a good year.

25 Q. While you worked there, were there professionals in the

1 marketing public relations media world that you interfaced with
2 as part of your role?

3 A. You mean in collaboration?

4 Q. Let me withdraw that. There was a couple of questions
5 there.

6 While you worked with Glaze, did Glaze employ a public
7 relations company to handle its public relations?

8 A. Yes. Gita Group.

9 Q. And was one of your responsibilities to interface with
10 Gita?

11 A. Actively, yes.

12 Q. And what did Gita do for the company?

13 A. Gita was the PR girl -- she is the agency or the head of
14 Gita Group. So they did the PR for Glaze.

15 Q. As part of PR, did they do social media outreach and things
16 like that, too?

17 A. That was one of their duties, yes.

18 Q. So you and Gita would do Facebook, Instagram, Twitter, that
19 sort of thing?

20 A. Yes.

21 Q. Do you know how much Gita was paid to do that work monthly?

22 A. A lot. I am not sure.

23 Q. What is a lot?

24 A. Hundreds of dollars. I don't have a specific number. I
25 don't know those details. Those finances are under them.

1 Q. They did some of the same things you did?

2 A. Who is they?

3 Q. Gita.

4 A. They did some of the same things I did?

5 Q. Yes.

6 A. Essentially. On the PR standpoint of things, social media.

7 Q. And is there an independent marketing company that works as
8 a third party with Glaze?

9 A. Not that I know of.

10 Q. Other than Gita, you didn't interface with any marketing
11 personnel or media people?

12 A. Gita and Project 13.

13 Q. What is Project 13?

14 A. The third-party design agency.

15 Q. Is that who Richard works for?

16 A. Yes.

17 Q. What sort of things did they do for Glaze?

18 A. Web development, graphic design, big projects, such as
19 menus, signage. He did a lot of the logos, a lot of the cool
20 graphics with the stuff for the business cards, and I did a lot
21 of the smaller things.

22 Q. What do you mean by smaller things?

23 A. Little stuff, little tweaks on the templates. I would work
24 with him on printing out big projects. I would collaborate
25 with him quite often on verbiage. When it came to content and

copy, we both would go back and forth on terms of what sounded right, what looked good, what was accurate, what was updated, numbers, things like that.

Q. And that took 30 hours a week working with Richard and changing verbiage and making tweaks?

A. No. That includes catering, it includes in-store promotions, it includes arranging things in the restaurant, it includes cleaning, it includes being a cashier, it includes being a delivery person. 30 weeks did not involve just the social media. There was a big aspect. There is more to those 30 weeks.

Q. I said 30 hours.

A. I apologize. 30 hours.

Q. You are saying there was a very small piece of what you did on a weekly basis was the PR, marketing, and branding, and most of what you did was the sort of work that the restaurant employees would have otherwise done, correct?

A. No. Social media was a big part of it. I mean, to break it down in terms of my marketing position, I did social media, I collaborated with the designer, we made all this material together, but at the same time I was responsible for distributing them. I was responsible for targeting the right demographics, the right target markets, the right audience, going out into the public, going out to colleges, going out to organizations, charities, farmers markets, flea markets.

Q. What I'm asking you is, in addition to the professionals you worked with at Project 13 and Gita Group, how many hours a week were you required to actually do that type of work in addition to what they were doing?

A. I'm sorry. Can you repeat that?

Q. You said that Project 13 and Gita Group were the outside professionals that did a lot of the same sort of work you did and then you were sort of responsible for distributing. Is that accurate?

A. Sure.

Q. The question is, is it your testimony today under oath that your work for the company, in addition to those professional companies, took 30 hours a week?

A. More or less.

Q. When you worked for the one group, I think you testified about them, were you paid?

A. I was.

Q. And you said you were an assistant there, but you also did marketing as an intern, correct?

A. Yes.

Q. As an assistant you were like an administrative assistant?

A. Yes.

Q. You worked for one of the executives or group of people?

A. The marketing manager.

Q. Just briefly, what sort of things did you do as an

1 assistant, the sort of things that we expect?

2 A. Yeah. Marketing -- the marketing manager handled a lot, so
3 she handled the marketing and events for the Gansevoort Hotel,
4 Gansevoort Park, things for the rooftop, things for the hotel
5 and for the restaurant, Asellina.

6 Q. When you worked at ONE Group, did you have to bring in your
7 Social Security card and your driver's license and fill out a
8 bunch of government documents before you started working?

9 A. Yes.

10 Q. It's like the I-9 and W-4 and those kinds of things, right?

11 A. Yes.

12 Q. When tax time came, you would go to your accountant, or H&R
13 Block or whatever, and you would submit a tax return that shows
14 you worked there, correct?

15 A. Yes.

16 Q. The reporter can't take down nonverbal.

17 A. Yes.

18 Q. When you worked for Glaze you never filled out that W-2
19 form, right?

20 A. I did not.

21 Q. You never had to bring in your Social Security card?

22 A. No.

23 Q. You never brought in your driver's license for them to make
24 a copy of, right?

25 A. No.

1 Q. You never filled out the I-9, correct?

2 A. No.

3 Q. Did you ever fill out a 1099 form?

4 A. No.

5 Q. Did you ever file a tax return as a result --

6 A. I did not.

7 Q. Let me finish -- as a result of your work at Glaze?

8 A. I did not.

9 Q. You did testify before that you were compensated but not on
10 a regular basis, correct?

11 A. Correct.

12 Q. And do you know approximately how much you were compensated
13 in 2012?

14 A. I don't have an estimate. There were sporadic little
15 amounts.

16 Q. How about 2013?

17 A. Same thing.

18 Q. And 2014?

19 A. Same thing.

20 Q. So you agree that you were paid, but you don't know how
21 much?

22 A. I was paid -- the first time I think I was paid was 400,
23 like a few months later maybe 300. Once walked his dog, got
24 \$20. It depended really on their generosity and kind of
25 projects that he did and if I brought it up.

Q. By the way, in addition to compensation, had you ever asked the marketing department at St. John's if you could receive credit for the work you did at Glaze?

MR. NOHAVICKA: Objection. Hearsay.

THE COURT: It's a question. It calls for hearsay.

MR. NOHAVICKA: It is going to be, yes.

THE COURT: Let me hear the question again.

MR. O'DONOGHUE: Sure, Judge.

Q. Did you ever ask anyone at the marketing department at St. John's if you could receive credit for the work that you did at Glaze?

THE COURT: Overruled.

A. I didn't bring it up.

Q. You asked one of the professors, the head of the department, if you could get credit?

A. I wasn't interested in credit. I think I was interested in the experience. It didn't matter if I got credit or not.

THE COURT: Did you hear the words of the question?

A. Sorry. Say it again.

THE COURT: I will read the question to you. You asked one of the professors, the head of the department, if you could get credit? That's the question.

THE WITNESS: I did not.

Q. That's for the whole time period you were there, correct?

A. Correct.

1 Q. And do you know if St. John's allows students to receive
2 credit for working while they are in school?

3 A. Yes.

4 Q. Is there a reason you never asked?

5 A. I wasn't -- I wasn't interested. It wasn't a priority for
6 me, even though I could. I didn't think about it. I just
7 wanted the opportunity with Glaze.

8 THE COURT: I'm sorry. Thank you.

9 MR. O'DONOGHUE: May I continue, Judge.

10 THE COURT: Yes.

11 Q. You said originally when you were hired it was to learn the
12 operations of a restaurant and you were going to shadow Paul,
13 is that right?

14 A. Yeah.

15 Q. You did that for a period of time, a few months, correct?

16 A. Yes.

17 Q. Was it three months, five months?

18 A. About three to five months.

19 Q. That would have been approximately from February of 2012
20 until about the summer of 2012?

21 A. Yes.

22 Q. Is that what you would consider your internship period?

23 A. Yes.

24 Q. As an operator did Paul do everything in the restaurant?

25 A. In what capacity?

1 Q. Did you ever see Paul work a cash register?

2 A. Yes.

3 Q. Did you ever see Paul go on a catering run?

4 A. Yes.

5 Q. Did you ever see Paul make a delivery?

6 A. Yes.

7 Q. Did you ever see Paul wipe a table down?

8 A. Yes.

9 Q. Did you ever see Paul greet customers?

10 A. Yes.

11 Q. Did you ever see Paul cook food?

12 A. No.

13 Q. Dennis does that, right?

14 A. Dennis does.

15 Q. As an operator you understand that what you learned was,
16 correct me if I'm wrong, that operators do everything in a
17 restaurant, correct?

18 A. Yes.

19 Q. No job is too small or too dirty for the owner, correct?

20 A. Yes.

21 Q. You were interested in learning operations, correct?

22 A. Part of it, yes.

23 Q. Did you in fact learn operations?

24 A. I learned, yes. For Glaze specifically.

25 Q. Do you have anything, any proof, any documentation,

anything you can point to that shows us what you did 30 hours a week for Glaze?

A. No.

MR. O'DONOGHUE: Just a moment, please.

Q. Since you left working with Glaze in approximately August of 2014, have you had any other corporate jobs?

A. No. I didn't seek that.

Q. So you have not worked in marketing or communications since that time, correct?

A. No. But I will be.

Q. You've been working as a server in a restaurant, correct?

A. I did.

Q. You are not doing that now?

A. No.

Q. And the last time you and I spoke, which was in October of last year, you had indicated you were at ICE, correct?

A. Yes.

Q. You were seeking a degree there?

A. Yes.

Q. Did you complete that degree?

A. I actually decided not to continue my program.

Q. And are you working right now?

A. No. I'm taking a break. I do have a couple of job offers for the end of the month.

Q. Are you in any formal education right now?

1 A. Besides my two classes, that's it. I'm finishing those
2 classes.

3 Q. You are taking those currently?

4 A. Yes.

5 Q. Why did you wait approximately a year from the time that
6 your alleged employment ended to bring this action?

7 A. I was scared.

8 Q. After you left Glaze, did you take an extended trip to
9 Europe?

10 A. Yes.

11 Q. Approximately how long were you gone for?

12 A. I was in Europe and Asia for about three months, three,
13 four months.

14 Q. Very quickly, I want to talk about some of this evidence
15 that was put in by your attorney. On that credit card that we
16 saw, do you know what the limit on it was?

17 A. No.

18 Q. Did you ever run up more than --

19 MR. NOHAVICKA: Objection. Withdrawn.

20 Q. Did you ever put more than a few hundred dollars on it?

21 A. Yes, I can say that.

22 Q. You said you think you got it in the last year you worked
23 there, is that right?

24 A. Yes.

25 Q. How much do you think you charged in total on that card?

1 A. I could say a couple of thousand.

2 Q. Over the whole period you had the card?

3 A. Yeah, sure.

4 Q. It was a few charges here and there for things you were
5 asked to buy, correct?

6 A. Yes.

7 Q. You didn't have autonomy to just buy what you want?

8 A. Unless it was just supplies for the restaurant. I never
9 charged personal things on it.

10 Q. Was it a debit card or a credit card?

11 A. A credit card.

12 Q. Was that your idea?

13 A. I'm sorry?

14 Q. The card, was it your idea to have the card so you didn't
15 have to keep submitting reimbursement forms and things like
16 that?

17 A. Yeah. There were no reimbursement forms.

18 MR. O'DONOGHUE: I have nothing further. Thank you,
19 Judge.

20 THE COURT: Any redirect?

21 MR. NOHAVICKA: Yes, your Honor.

22 REDIRECT EXAMINATION

23 BY MR. NOHAVICKA:

24 Q. Jesseca, on the times, the occasions that you were paid in
25 cash, were you given by your employer, Glaze Teriyaki, any kind

1 of receipt for the money that they gave you in compensation?

2 A. No.

3 MR. O'DONOGHUE: Objection.

4 THE COURT: Overruled.

5 Q. Were you provided with any kind of Google spreadsheet that
6 showed the hours that you worked?

7 A. No.

8 Q. Did Glaze Teriyaki withhold taxes for the monies that they
9 paid out to you?

10 A. I am not sure.

11 Q. You don't know?

12 A. I don't know.

13 Q. Did you receive anything from New York State Department of
14 Tax and Finance?

15 A. No documents, no.

16 Q. Anything from the IRS with respect to that?

17 A. No.

18 Q. This is the last thing I am going to ask about them. I am
19 afraid you are going to have to go to the binder and go to
20 Exhibit 9 and specifically you are going to go to 0104 on the
21 top right-hand side.

22 A. I'm sorry. Could you repeat that?

23 Q. It says Naldo, then underscore, 0104, as part of Exhibit 9.

24 A. Got it.

25 Q. You mentioned, when counsel was questioning you, Gita. Is

1 that Gita McCutcheon?

2 A. Yes.

3 THE COURT: You have to answer in words, ma'am.

4 Q. Gita McCutcheon?

5 A. Yes.

6 Q. Who is Gita McCutcheon?

7 A. Gita was the public relations girl for Gita Group.

8 Q. And what is Gita Group?

9 A. A public relations firm.

10 Q. That worked with --

11 A. With Glaze.

12 Q. Glaze Teriyaki?

13 A. Yes.

14 Q. Yes?

15 A. Yes.

16 Q. What is Naldo 0104? Is it an e-mail?

17 A. Yes.

18 Q. Just starting from the top, who was the e-mail from?

19 MR. O'DONOGHUE: Objection. This document is not in
20 evidence.

21 MR. NOHAVICKA: It's not offered yet, your Honor.

22 THE COURT: Overruled.

23 Q. Who was this e-mail from? Is it from Gita?

24 A. Yes.

25 MR. O'DONOGHUE: Objection, your Honor, leading.

1 THE COURT: Overruled.

2 A. It's from Gita.

3 Q. Jesseca, you're looking at the top --

4 A. It's from Gita.

5 Q. Who was it to?

6 A. To Ian, CC Paul, as well as Dennis.

7 MR. O'DONOGHUE: Objection, your Honor. The witness
8 continues to read from a document that is not in evidence.

9 THE COURT: This is laying the foundation and if the
10 question isn't asked and answered, you'll have a good objection
11 on foundation. So it can't be both ways.

12 MR. NOHAVICKA: Your Honor, also, it's not objected to
13 in the JPTO.

14 THE COURT: We are not up to that yet.

15 MR. NOHAVICKA: Yes, your Honor.

16 Q. You're included on this e-mail?

17 A. I am.

18 Q. What was the subject of this?

19 THE COURT: Let me ask, is there an objection to this
20 exhibit?

21 MR. O'DONOGHUE: Just that it's not in evidence and
22 she is reading from it.

23 THE COURT: That wasn't the question I asked.

24 MR. O'DONOGHUE: The document itself?

25 THE COURT: Yes.

1 MR. O'DONOGHUE: I don't think so, no.

2 THE COURT: You want to offer it?

3 MR. NOHAVICKA: I would like to offer Exhibit 9.

4 MR. O'DONOGHUE: Objection.

5 THE COURT: Pardon me?

6 MR. NOHAVICKA: I'm not finished yet. Exhibit 9,
7 0104, 105, 106, only those pages of Exhibit 9 into evidence.

8 THE COURT: Any objection?

9 MR. O'DONOGHUE: Improper foundation.

10 MR. NOHAVICKA: I'll lay the foundation.

11 THE COURT: Go ahead.

12 Mr. O'Donoghue, let me see you at side bar.

13 (Continued on next page)

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(At the side bar)

THE COURT: I'm very concerned, Mr. O'Donoghue, and perhaps a little bit lost. It sounded to me like you were objecting to the asking of foundation questions and counsel indicated there was no objection to the exhibit on the joint pretrial order. So I asked you if you objected to the exhibit and then you said there was no foundation laid. I'm a little bit at sea, Mr. O'Donoghue. I don't quite get it.

MR. O'DONOGHUE: Would you like me to explain?

THE COURT: That's exactly what I would like you to do.

MR. O'DONOGHUE: If counsel would like to lay a foundation for the document -- as you recall, your Honor, he tried with the offer of Plaintiff's 1, he offered it, he couldn't lay a foundation, the witness couldn't support the foundation and it didn't come in, the LinkedIn thing. We had a side bar about it, didn't come in.

Now he's plucking out three pages of approximately 290 pages, he is trying to put in all 290 pages, I believe.

MR. NOHAVICKA: No.

MR. O'DONOGHUE: Trying to put in three pages. Rather than first laying a foundation for those three pages, he is asking the witness to read directly from the document. At least how I understand it, that's not how a foundation for a document is laid. It has to be actually laid first and then

1 the witness, it can be offered, I may or may not object to it
2 and then it can be read from. I don't know what the purpose of
3 this document is. It appears to be four pages of, quite
4 frankly, nonsense e-mails that I'm not sure are particularly
5 relevant in the first place. I'm fairly certain it's outside
6 the scope of cross. I would like to have the opportunity to
7 make my objection.

8 THE COURT: What is the question that you asked?
9 What's on the piece of paper, or did you ask, is this an
10 e-mail? What is this document? What did you ask?

11 MR. NOHAVICKA: I can't remember, but I'll ask what
12 the document is. Just as an offer of proof, he mentioned Gita
13 and the foundation group and what she did. This e-mail is
14 going to show that she did quite a bit.

15 MR. O'DONOGHUE: The witness already testified about
16 Gita and what she did. I'm not sure what this adds to that
17 conversation.

18 MR. NOHAVICKA: It is not going to the proof.

19 THE COURT: Back and forth. I asked a question of Mr.
20 O'Donoghue. I heard what he had to say in terms of a response.
21 Thank you very much.

22 (Continued on next page)
23
24
25

(In open court)

MR. NOHAVICKA: Your Honor, may I proceed.

THE COURT: You may.

BY MR. NOHAVICKA:

Q. Jesseca, I've handed you and made you pick out pages 104, 105, and 106 of Plaintiff's Exhibit 9 for identification. Can you tell the jury what this document is, without saying what's contained in the document?

A. The subject is social media ideas.

THE COURT: Do you understand? You are not supposed to read from the document. What is it? Are you looking at a matchbook cover? Are you looking at a page of a comic book? What is the document?

THE WITNESS: It's an e-mail.

THE COURT: Thank you. Next question.

Q. Have you ever seen this document before?

A. Yes.

Q. And in what form have you seen it? In an e-mail?

A. In an e-mail, yes.

Q. Is this an e-mail that you received?

A. Received and sent.

Q. And how is it that you know that you received this by e-mail? Is your e-mail address on there?

A. Yes.

Q. And do you know who the people are who sent you these

1 documents?

2 A. Yes.

3 Q. How do you know that? Does it have their e-mail address on
4 it?

5 MR. O'DONOGHUE: Objection to leading, your Honor.

6 THE COURT: Overruled.

7 A. Yes.

8 Q. And the person that you received it from, had you received
9 e-mails from that person on prior occasions?

10 A. Often, yes.

11 Q. And that was their correct e-mail address?

12 A. Yes.

13 Q. And you were able to respond to them as well?

14 A. Yes.

15 MR. NOHAVICKA: Your Honor, at this time I will offer
16 into evidence Plaintiff's Exhibit 9, pages 104 through 106 as
17 Plaintiff's Exhibit 9.

18 MR. O'DONOGHUE: Objection. Improper foundation and
19 I'd like a voir dire.

20 THE COURT: Overruled. Received.

21 (Plaintiff's Exhibit 9 received in evidence)

22 MR. NOHAVICKA: Permission to publish.

23 THE COURT: You may.

24 Q. You see it on your screen?

25 A. Not yet.

1 Q. Just look at your document, the first page. And on the
2 second transmission, July 19, 2012, you see that?

3 A. Yes.

4 Q. And that's something that you sent to Gita, right?

5 A. Yes.

6 Q. And why were you writing to her?

7 A. I wanted to get her feedback, as well as share my ideas
8 with her and the rest of the group.

9 Q. And ideas pertaining to what, Jesseca?

10 A. To our social media strategy for Glaze Teriyaki.

11 Q. And did you lay out the strategy in the e-mail itself?

12 A. I did, yes.

13 Q. And does the strategy start at the beginning after you say,
14 hope these all make sense in any way at the bottom of the 0104?

15 A. Yes.

16 MR. O'DONOGHUE: Objection. Leading questions.

17 THE COURT: Try to refrain from leading.

18 MR. NOHAVICKA: Yes, your Honor.

19 Q. Where does your strategy begin on Plaintiff's Exhibit 9?

20 A. After it says, hope these make sense or help in any way.

21 Q. And does it continue on to the next page?

22 A. Yes.

23 Q. And is that a continuation of your strategy?

24 A. Yes.

25 Q. And does it continue on throughout the bottom of the page?

1 A. Yes.

2 Q. And then you signed off at the bottom of 105, correct?

3 A. Yes, that's me.

4 Q. And then looking at 106, there is two e-mails. One from
5 Paul Krug, is that right? You see that in the middle, July 19
6 at 9:38 a.m.?

7 A. Yes.

8 Q. How does he respond to your suggestions?

9 A. Good job.

10 Q. And you get a response from Gita McCutcheon, also?

11 MR. O'DONOGHUE: Objection. The documents speak for
12 themselves.

13 MR. NOHAVICKA: The documents do not speak, your
14 Honor.

15 THE COURT: I am going to allow the question. The
16 documents may very well speak for themselves and documents do
17 speak. However, I am going to allow the question. Go ahead.

18 Q. How does Gita respond to your suggestions?

19 A. This is really great, Jesseca. Let's talk through this and
20 Ian's ideas today.

21 THE COURT: Ladies and gentlemen, you should be aware
22 that these exhibits are not received for the truth of their
23 contents but the fact that they were sent back and forth.
24 That's the only reason for which they are received into
25 evidence.

1 Go ahead.

2 Q. And you testified on cross-examination that the e-mail was
3 the only document, written document that you had where you were
4 requesting payment?

5 A. Yes.

6 Q. Were there other e-mails in existence that you did not have
7 access to?

8 MR. O'DONOGHUE: Objection.

9 THE COURT: Basis.

10 MR. O'DONOGHUE: Counsel is calling for speculation as
11 to any other documents that may have existed which he cannot
12 produce today.

13 THE COURT: Rephrase your question.

14 Q. Do you have personal knowledge of the existence of any
15 other written documents where you requested payment for your
16 work --

17 MR. O'DONOGHUE: Objection.

18 THE COURT: Basis.

19 MR. O'DONOGHUE: Your Honor, we had full and fair
20 discovery in this matter.

21 THE COURT: Stop it. The basis for your objection.

22 MR. O'DONOGHUE: The basis of my objection is renewed
23 as to the last time. Counsel is asking --

24 THE COURT: Overruled.

25 MR. O'DONOGHUE: Asking about a hypothetical document

that may or may not have existed.

THE COURT: Overruled. It's a perfectly fine question. Overruled.

A. Yes.

Q. Excuse me.

MR. NOHAVICKA: Counsel wanted to say something?

THE COURT: Ask your next question.

Q. The question was whether other documents existed.

A. Yes.

Q. But you do not have those documents, correct?

A. Unfortunately, no.

MR. NOHAVICKA: I have nothing further, your Honor.

THE COURT: You may step down.

MR. O'DONOGHUE: Your Honor, may I have a brief recross, considering --

THE COURT: The exercise of discretion, ladies and gentlemen. Usually what the order in a trial is, there is the direct examination, then there is a cross, and then there is a redirect by the party who called the witness. The Court has the discretion to allow a brief recross-examination, but that's a discretionary matter. Here I am going to allow Mr. O'Donoghue to do that.

MR. O'DONOGHUE: Thank you, your Honor. Just because --

THE COURT: I don't need commentary. Just ask the

1 question.

2 RECROSS EXAMINATION

3 BY MR. O'DONOGHUE:

4 Q. Ms. Naldo, you don't have any other proof of these
5 documents existing, do you?

6 A. Can you clarify these documents.

7 Q. Your attorney asked you if you knew of any other documents
8 that may exist that may have said that you asked for
9 compensation on more than one occasion, right?

10 A. Yes.

11 Q. You don't have those documents, right?

12 A. Those e-mails are gone.

13 Q. And the e-mail that you were shown the chain, from Gita and
14 you, do you know if any of those were ever implemented?

15 A. I'm sorry?

16 Q. You had a bunch of suggestions and this would be great and
17 this would be great and Foursquare this and Twitter that, were
18 any of those actually implemented, to your knowledge?

19 A. Some were, yes.

20 Q. Do you have any proof of that?

21 A. I am not sure.

22 Q. It's a yes or no question. Do you have any proof?

23 A. Proof that I implemented?

24 Q. Proof that they were used, yes.

25 A. Used, but not with my name, no.

Q. The question is, do you have any proof that shows that anything you suggested in those e-mails was implemented that you can show us? It's yes or no.

THE COURT: Can you answer the question.

A. No.

MR. O'DONOGHUE: Thank you.

THE COURT: You may step down.

(Witness excused)

THE COURT: Call your next witness.

MR. NOHAVICKA: We have no further witnesses, your Honor.

THE COURT: Plaintiff rests.

MR. NOHAVICKA: Yes, we do.

THE COURT: Mr. O'Donoghue, call your first witness.

MR. O'DONOGHUE: Your Honor, at this time we request a side bar. We have something to take up with the Court regarding a motion.

THE COURT: Ladies and gentlemen, you can stand up and stretch.

(Continued on next page)

(At the side bar)

MR. O'DONOGHUE: Clearly this is a ripe case for a Rule 50 motion for judgment as a matter of law. There has been absolutely no evidence, documentary or otherwise, submitted by the plaintiff to indicate that this person legally was an employee of this company.

THE COURT: The motion is denied. A case can be established from the mouth of the plaintiff. The plaintiff's testimony is proof, if believed by the jury. Motion denied.

(Continued on next page)

1 (In open court)

2 MR. O'DONOGHUE: The defendants call Mr. Paul Krug.

3 THE COURT: Come on up, Mr. Krug.

4 PAUL KRUG,

5 a Defendant, called as a witness on his own behalf,

6 having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. O'DONOGHUE:

9 Q. Good afternoon, Mr. Krug.

10 You are the owner and operator of Glaze Teriyaki LLC,
11 is that correct?

12 A. Managing member, yes.

13 Q. And what is Glaze Teriyaki?

14 A. It's a fast, casual, healthy Japanese restaurant.

15 Q. How many members are in Glaze Teriyaki, LLC?

16 A. Including -- in the entity level?

17 Q. Total.

18 A. Probably 15.

19 (Continued on next page)

20

21

22

23

24

25

BY MR. O'DONOGHUE:

Q. And did you come to know the plaintiff Jessica Naldo at some point?

A. Yes.

Q. How?

A. I was in the basement one day early on when we opened the first location at Lexington, and a cashier I believe came down and told me that there was someone, a customer, that introduced herself as someone from Seattle and excited about the food we were selling and what we were doing. I'm from Seattle also, and there are Seattleites across the country here and thought it would be nice to go up and say hi and hope she had a good time.

Q. Did there come a time where the plaintiff began to work with or at Glaze Teriyaki?

A. Yes.

Q. When was that?

A. Early 2012.

Q. And what did she do?

A. I would consider her an internship. There would be a variety of different things that she would do. I typically, with whether it's with a potential intern or another member of the company, like to start things what do you want to do out of this, and see if there's -- make sure it's a win/win situation and see how best we can make things work for everybody

involved. And so with Jessica we started with -- I wanted to hear what she might want to do with us and see if that could make sense on our end and proceed from there.

Q. Before Ms. Naldo, did you ever have an intern at Glaze Teriyaki?

A. No.

Q. Have you had one since?

A. No, we did have one intern.

Q. Before or after?

A. Briefly, before.

Q. Did that intern receive college credit?

A. Yes, I believe so.

Q. Ms. Naldo said before that she -- you heard her testimony, today, correct?

A. Yes.

Q. She said before she was your integrated marketing and brand manager, is that accurate?

A. We have never given a title like that out, and have essentially farmed out all branding and marketing activities to third-party professional companies in the city since the beginning.

Q. Is that Project 13 and Gita McCutcheon?

A. Yes, at this time, the time in question, yes.

Q. Before Ms. Naldo, who did the marketing and branding strategy for the company?

1 A. I would in conjunction with the professional third-party
2 companies, Gita Group and Project 13.

3 Q. How essential, if at all, was Ms. Naldo to your operation?

4 A. Not essential.

5 Q. And if you recall, in the first five or six months from
6 February 2012 until say the end of the summer of that year, how
7 many hours did she work with you?

8 A. I don't recall exactly. I would have to say around ten
9 hours a week, maybe, maybe.

10 Q. Would she come in in the morning or would she come in in
11 the afternoon?

12 A. It would really depend. Her schedule would fluctuate. We
13 did our best to try to accommodate. At the time I was told she
14 was a senior and graduating in the spring, it was the second
15 semester of the senior year of college. She was from the same
16 hometown. And I would allow her to -- not allow, but the
17 priority in my mind was here's a senior in college in the last
18 little bit, and however it can be a complementary experience
19 for her.

20 Q. Would you have done that with any of your other employees?

21 MR. NOHAVICKA: Objection, speculation.

22 Q. Withdrawn. Did you then or do you now do that with any of
23 your restaurant employees?

24 A. No.

25 Q. Are all your restaurant employees paid?

1 A. Yes.

2 Q. Do they clock in and clock out on a regular basis?

3 A. Yes.

4 Q. Is there anyone other than you in the company that does not
5 clock in or clock out on a regular basis?

6 A. My business partner, Dennis Lake.

7 Q. The gentleman seated at the table?

8 A. Yes.

9 Q. Did you ever compensate Ms. Naldo for anything she did for
10 the company?

11 A. Yes.

12 Q. What sort of things was she compensated for?

13 A. Her compensation would come in a variety of ways. We were
14 at the time one small 625-square-foot restaurant on Lexington
15 between 54th and 55th paying enormous rent and doing our best
16 to, one, survive and hopefully lay the foundation to grow as a
17 company. And so depending on the week or what was going on at
18 that time, whether it was lunch or Metrocards or concert
19 tickets or a check or different things, and this was all
20 explicitly discussed in advance with Ms. Naldo.

21 Q. And in 2012, what sort of tasks did she perform for the
22 company?

23 A. Well, my understanding is that she was excited about our
24 concept and what we were doing. It was mentioned earlier that
25 in Seattle, where I grew up, there are a lot of Teriyaki shops

1 which don't really exist around in New York. And she expressed
2 an interest in being involved in it and seeing how that works
3 and how a start-up new restaurant concept might work and what
4 goes on day to day, and expressed an interest in learning a
5 variety of parts of the company, which we tried to sprinkle
6 around through myself or through my partner Dennis, who is the
7 chef and another co-operator with me.

8 Q. Did her duties or roles change between after 2012 into 2013
9 or into 2014?

10 A. Well, my understanding was that she was going to be
11 graduating in spring of -- I believe it's '12 was her senior
12 year, second semester, and that did not happen. And she was --
13 the entire time I have known her, interacted with her was as a
14 full-time student is what I was told. So there isn't -- it
15 became clear with the actions and the week-to-week performance
16 or non-performance that there couldn't be much on the plate
17 that we could, one, rely upon or expect to get done given other
18 things going on in her life.

19 Q. You're saying she wasn't reliable?

20 A. Correct.

21 Q. Did she have a set schedule of any kind?

22 A. No.

23 Q. Why?

24 A. We were, still are, a small company. It became -- early on
25 it was very clear to myself and to my partner Dennis that we

could not rely on her to do anything that we really needed done in a certain time period. And so that in and of itself kind of prevents us from putting together a schedule or wanting her to be involved in that capacity, because we were getting burned during her first few months from erratic behavior, tardiness, flakiness, not showing up, not completing tasks. It became more work to try and do it with her than to just do it on our own.

Q. Is that why you went to a flexible working schedule?

A. Well, at different times I was told that she had a different number of classes or some summer breaks or certain nights or days or weekends that she's able to do things. And so in an attempt to accommodate, we would adjust things, yes.

Q. If you recall, what sort of things would she do when she was able to come into the restaurant?

A. Well, one of the things that really we started out with was on the social media side of things. Social media was not something that we spent a lot of time, energy or money on, as we, several years later now as we have gone to become a little bit of a bigger company, we now have more of a focus on it as we look to expand. But at the time it was a very minor part of what we do, and there would typically consist of three mediums online, our Facebook, Twitter, and Instagram -- I'm not sure back then if Instagram was -- suffice to say there were three platforms, and we would do periodic updates on them weekly.

1 A pet peeve of mine as an operator is when things like
2 social media that are not integral parts of what we're doing
3 start and get herky jerky, so you do five -- a lot of attention
4 to it one week and then a drop off for three weeks and it picks
5 up again. So we set up a schedule that we felt like as a
6 company with we could live up to and that Jessica could live up
7 to, and that required very minimal postings online in a minimal
8 amount so it looked like a consistent effort.

9 Q. Was that done?

10 A. Yes, with great teamwork and communication and guidance,
11 yes.

12 Q. How many employees does Glaze Teriyaki have, Glaze Teriyaki
13 LLC have?

14 A. Around 15.

15 Q. Are all of those employees paid?

16 A. Correct.

17 Q. How are they paid?

18 A. Via ADP.

19 Q. So for any employee, if you needed to pull up their working
20 hours or their pay rates, you can do that through ADP?

21 A. Yes.

22 Q. Why can't we do that with Ms. Naldo?

23 A. One, we never hired her as an employee. We liked her as a
24 person, we hoped -- the hope was that in the winter of '12 when
25 we started this was that she would graduate and the hope was

that it could potentially turn into a job, which it became clear during her internship she was not ready to be a full-time member of our company.

Q. And so how many hours a week -- after the internship period, how many hours a week do you think she worked in 2012, 2013, 2014?

A. There would be stretches where there would be no work. There would be some stretches where it might be -- the truth is I don't know because much of what she claimed she was working on or doing, that would typically not amount to anything or finish in a usable state for us, was really done in an office. We didn't have an office, we had very small footprint in the city, and a lot of it was supposedly done at her apartment or away from us where we didn't know.

Q. Do you know if Ms. Naldo traveled frequently during the time she worked at Glaze?

A. Absolutely.

Q. Do you know how often?

A. It's hard for me to say on an average basis, but it was certainly -- I was envious of her social life and how much she was able to do at night and around the country and elsewhere.

MR. NOHAVICKA: Objection, move to strike, your Honor.

THE COURT: Sustained. Stricken, not responsive.

Q. How did you follow where Ms. Naldo was if she wasn't in the office?

1 A. Oftentimes people -- I have worked in large, very big
2 restaurants or hospitality venues before, and also in very
3 small ones, like what Glaze is. And everyone -- people often
4 times assume a bigger restaurant, it's harder. I find that in
5 many ways the smaller you are the harder it gets, and that
6 there's very few people around and you really have to rely on
7 them, and sometimes the most important thing is just having
8 someone show up. And for us at that stage we were such a small
9 company, it became clear we could not rely on her for this
10 stuff, and so anything critically important, things like that,
11 we just didn't put on the plate.

12 Q. If she wasn't in the office, how did you communicate with
13 Ms. Naldo?

14 A. I would say primarily via email.

15 Q. Do you know -- did you have an opportunity to review your
16 email history before today with Ms. Naldo?

17 A. Yes, I went through the inboxes.

18 Q. Do you know approximately how many emails Ms. Naldo sent or
19 received in 2012?

20 A. Maybe low hundreds, 200, 250, 300.

21 Q. How about in 2013?

22 A. Certainly less. I feel like it was a steady sort of drop
23 down.

24 Q. And 2014 were there any emails?

25 A. Much more minimal than earlier.

1 Q. Would it be fair to say that she worked a lot or more in
2 2012 and that decreased substantially over the time period that
3 she was working with you?

4 A. I think that's fair to say, yes.

5 MR. O'DONOGHUE: I have nothing further, thank you,
6 Judge.

7 THE COURT: Cross-examination.

8 CROSS-EXAMINATION

9 BY MR. NOHAVICKA:

10 Q. So your attorney asked and you adopted the question saying
11 that she was unreliable, is that accurate?

12 MR. O'DONOGHUE: Objection to characterization of the
13 question.

14 THE COURT: Overruled.

15 Q. Is that accurate?

16 A. Yes.

17 Q. And you kept her for 30 months?

18 A. She did --

19 Q. Yes or no.

20 MR. O'DONOGHUE: Objection. Counsel is being
21 argumentative.

22 THE COURT: Overruled.

23 Q. You did not keep her for 30 months?

24 A. We don't keep anyone --

25 Q. Did you tell her to leave before the 30 months?

1 THE COURT: Let the witness answer the question.

2 Don't jump on the answer. Go ahead.

3 Q. Did you tell her to leave before the 30 months?

4 A. I felt like Jessica was a nice person and we were from the
5 same hometown and she wanted experience and résumé builder
6 work. And we, in conjunction with the professional marketing
7 public relations and branding groups that we work with that
8 work with a variety of successful hospitality concepts in New
9 York and elsewhere in this country, we fed little things that
10 she could work on, like a music play list for a restaurant, or
11 if she had an idea, to try to work on something. We did our
12 best to try to help out with that, yes.

13 Q. So unreliability in your organization is not accepted
14 unless they're from your hometown?

15 MR. O'DONOGHUE: Objection.

16 Q. Is that fair?

17 THE COURT: That's argumentative. Rephrase it.

18 Q. You don't deny that, and you don't change your position
19 that she was unreliable, right?

20 A. She was totally unreliable.

21 Q. And have you ever let anyone at Glaze Teriyaki remain as
22 workers for a period of 30 months?

23 A. This is why we never hired her. She was never someone --
24 we didn't have that expectation level that we would have with
25 anyone else at the company because we never hired her for this

1 reason, amongst others.

2 Q. You said that before she came you used to handle the
3 marketing yourself, right?

4 A. I have --

5 Q. And --

6 A. I'm not done.

7 THE COURT: Excuse me, he's not finished with the
8 answer. Go ahead.

9 A. The marketing, branding and public relations and everything
10 under that umbrella has been a primary focus of me to this day
11 from the start of this restaurant company, yes.

12 Q. And then you outsourced it to Gita, is that right?

13 A. That's incorrect. From day one we have worked with a
14 public relations company, we worked with graphic designers, we
15 worked with branding companies and a variety of marketing people
16 and companies throughout the five and a half years that we have
17 been open. So it's not outsourcing for me. I quarterback that
18 effort and work in conjunction with many people and companies.

19 Q. And this is for your company that you described as a small
20 company, right?

21 A. Yes.

22 Q. And a small company that has a restaurant in New York City,
23 right?

24 A. Currently.

25 Q. And a small restaurant in San Francisco as well, right?

1 A. I was going to say something. Currently we have three
2 locations in New York City. We have two that we received a
3 licensing fee from in San Francisco that we don't operate day
4 to day, and we recently opened one in Chicago.

5 Q. Okay. And when your counsel asked you how many hours she
6 worked, that was from some sort of employee record book you
7 have?

8 MR. O'DONOGHUE: Objection.

9 THE COURT: Rephrase it, if you will, please.

10 Q. You testified as to how many hours Jessica Naldo worked, is
11 that correct?

12 A. I have no way of knowing how many hours she actually worked
13 at any moment in time because she claimed she did a lot of work
14 outside of my presence, and most often it resulted in nothing
15 tangible, so I have no idea if it was done or not.

16 Q. I'm sorry, because I thought I heard you say 250, 300. Do
17 you remember testifying to that?

18 MR. O'DONOGHUE: Objection.

19 Q. That might be wrong.

20 MR. O'DONOGHUE: Objection. What counsel heard is not
21 relevant.

22 Q. Is that what your testimony was.

23 MR. O'DONOGHUE: Objection to the form of the
24 question.

25 THE COURT: Overruled.

1 A. What does 250 or 300 reference to?

2 Q. You were asked how many hours.

3 THE COURT: No, it was an answer about emails.

4 MR. NOHAVICKA: Sorry, emails, that's right.

5 Q. You have no idea -- withdrawn.

6 You don't know exactly how many hours Jessica worked,
7 is that fair to say?

8 A. We certainly attempted on multiple times to have Jessica
9 fill out a form where she told us what hours she worked, and
10 she never did. I cannot discern how many hours someone worked
11 for Glaze based on how many emails I received. Certainly if I
12 feel like one year I received several hundred and another year
13 I received half of that, I could theorize that maybe there was
14 less work going on. But I don't know, based on her mail count,
15 how many hours a week she was doing. I just don't know. We
16 tried to find out, but she would never give it to us. She
17 would never do it.

18 Q. So it was her protracted silence that was the reason for
19 her not giving you the forms that you needed, the W-2, the
20 1099?

21 MR. O'DONOGHUE: Objection. Mischaracterizes the
22 testimony.

23 THE COURT: Overruled.

24 A. We gave Ms. Naldo -- my partner, Dennis Lake, gave
25 Ms. Naldo forms like that at one point, asked her to fill them

1 out, give them back to us like everyone else at the company
2 because she was receiving some compensation, and she never did.

3 Q. But you didn't fire her after that, did you?

4 A. I don't think -- well, first of all, she never had an
5 important role or I guess a fireable role for us. To this day
6 I believe she's a nice person. Again, we're from the same
7 town. I met her parents. While she's in year five, six, or
8 however many years of college and she wants to help us out and
9 learn from what we're doing, we wanted to be a helpful resource
10 for her, if possible. And the way we made that work for both
11 sides was she would work on very, I guess, non-essential
12 day-to-day operations. There was nothing that we relied upon
13 her for.

14 THE COURT: Try to avoid the "we."

15 A. Nothing that I relied on her for. My expectation was that,
16 if not all, most of what she might say she wants to do or
17 propose to do or might discuss her doing would never get done.

18 Q. She was working directly with Gita, was she not?

19 A. She wasn't working directly with Gita, she was involved in
20 the process as a way for her to learn about this process and
21 how it goes.

22 Q. And her work was in fact approved by your company, was it
23 not, as we saw in the exhibit put into evidence?

24 MR. O'DONOGHUE: Objection. What exhibit are we
25 talking about?

1 MR. NOHAVICKA: Exhibit 9, 104, 105, 106.

2 MR. O'DONOGHUE: Objection. Mischaracterization of
3 what is in evidence.

4 THE COURT: Overruled.

5 Q. Did you disapprove of her work that she did?

6 A. I haven't read the email that you're referring to.

7 Q. We'll get it for you.

8 MR. NOHAVICKA: Your Honor, to save time, could I hand
9 it up?

10 THE COURT: You may. Identify what you are showing
11 the witness.

12 MR. NOHAVICKA: If the record could please reflect I'm
13 showing the witness a hard copy of Plaintiff's Exhibit 9, Naldo
14 Bates stamp 104, 105 and 106.

15 THE COURT: Okay.

16 A. Well, as I'm looking at this, her --

17 Q. My question to you is: Did you approve of her work?

18 A. I was attempting to answer.

19 MR. O'DONOGHUE: Objection.

20 THE COURT: I don't think that's the way the question
21 came out originally. You're withdrawing your prior questions?

22 MR. NOHAVICKA: Withdrawing all prior questions.

23 THE COURT: There's no question pending before you.
24 Do you understand that?

25 THE WITNESS: Okay.

1 THE COURT: Ask your question.

2 BY MR. NOHAVICKA:

3 Q. Did you have a chance to review the emails that are now in
4 evidence as Plaintiff's 9, 104, 105 and 106?

5 A. Referring to this?

6 THE COURT: Yes.

7 A. I'm looking at it now.

8 Q. Yes, the document I just handed to you.

9 A. Well, this seems to be breaking out -- there's -- it looks
10 like to me about four or five core ideas here, and the first --

11 THE COURT: No, the question is -- I think the
12 question was: Did you have a chance to look at the document?

13 THE WITNESS: Yes, I did.

14 THE COURT: That's the question so far. Now there's
15 he going to be another question, I have a feeling, that follows
16 it.

17 Q. Are you part of that email chain?

18 A. Yes.

19 Q. And you responded yourself in that email chain, is that
20 right?

21 A. Yes.

22 Q. And your response was: Good job. Is that close?

23 A. Yes.

24 Q. And that was about what Jessica had done for your company?

25 A. But --

1 Q. Is that right or wrong?

2 A. But I guess the standard with Jessica might have been it
3 might have been a good job that she took the time to even type
4 something up that she said she would, or that sort of thing.
5 And as a restaurant operator, I get advice or ideas or thoughts
6 about good ways to market or menu ideas or any number of
7 construction ideas from a variety of friends and family and
8 people around me throughout, and I think it's wonderful when
9 people offer that up and it's wonderful that Jessica put this
10 in. Whether it was actually done by her, as I look at this,
11 none of this was actually --

12 MR. NOHAVICKA: Objection, your Honor, I don't have a
13 question on this.

14 THE COURT: Thank you. You can ask your next
15 question.

16 Q. In addition to the marketing that she did for you -- she
17 did some marketing for you, is that right?

18 A. Yes, very minimal.

19 Q. In addition to that, didn't she handle big collections as
20 well?

21 A. Not in a material way that I'm aware of.

22 Q. Like contacting, for example, Comentum, are you familiar
23 with that company?

24 A. Comentum. I don't recall the name.

25 Q. Or perhaps going to the store to pick up thank you letters

1 for you?

2 A. That certainly could have occurred.

3 MR. NOHAVICKA: I have nothing further.

4 THE COURT: Any redirect?

5 MR. O'DONOGHUE: No, your Honor, thank you.

6 THE COURT: Okay. You may step down.

7 You can call your next witness.

8 MR. O'DONOGHUE: Thank you, Judge. Could I have one
9 moment, please, to speak to the other defendant before I call
10 him?

11 THE COURT: Yes.

12 (Pause)

13 MR. O'DONOGHUE: Your Honor, after conferring with my
14 clients, we decided the defense rests at this time.

15 THE COURT: All right. Is there any rebuttal case
16 from the plaintiffs?

17 MR. NOHAVICKA: Nothing, your Honor.

18 THE COURT: So ladies and gentlemen, that concludes
19 the evidentiary portion of this case, it does not conclude the
20 trial. I feel like we have known each other forever, even
21 though it was only since this morning. But now what happens is
22 tomorrow each side will have the opportunity to briefly sum up
23 and tell you what they think the evidence shows, and then I
24 will give my final instructions on the law.

25 From the plaintiff, how long do you need?

1 MS. PANAGOPOULOU: Approximately five to ten minutes.

2 THE COURT: All right. And from the defendant?

3 MR. O'DONOGHUE: I think that same time frame would be
4 sufficient.

5 THE COURT: So you will have the case in hand
6 tomorrow, and so what I'm going to ask you to do is go home,
7 have a pleasant evening, and I will see you back here
8 10 o'clock tomorrow morning.

9 Now remember what I told you, do not discuss the case
10 among yourselves or with anyone. Do not endeavor to do your
11 own research. You're not allowed to do it. It's unfair to one
12 side or the other to try and do that. So please, follow that
13 instruction that I give you, and have a great evening. I will
14 see you tomorrow morning at 10 o'clock.

15 (Jury not present)

16 THE COURT: Please be seated.

17 For the record, this morning before the voir dire
18 process began I had marked as Court Exhibit 1 an aid to memory
19 used in questioning the jurors, Court Exhibit 2, a special
20 verdict sheet, and Court Exhibit 3, proposed jury instructions.

21 I know Mr. O'Donoghue's offices down here are in lower
22 Manhattan, and I believe plaintiff's counsel's office is in
23 Astoria, is that correct?

24 MR. NOHAVICKA: Yes, your Honor.

25 THE COURT: So what I am going to ask you to do is, if

1 you have any comments on the jury instructions or on the
2 verdict sheet, first of all, please look at them, and I am
3 going to have my law clerk give you his email and they should
4 be transmitted no later than 8:30 tonight. And then we'll be
5 ready to go in the morning, we'll briefly discuss the
6 instructions. I ask you all to get here at 9:15 and we'll take
7 that up and proceed.

8 So have a good evening, and I will see you tomorrow
9 morning.

10 MR. NOHAVICKA: Thank you, your Honor.

11 MR. O'DONOGHUE: Thank you, your Honor.

12 (Adjourned to April 12, 2016 at 9:15 a.m.)
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